Without supervisory review by the Supreme Court, some litigants will continue to receive orders procured by officer of the court fraud. It is impossible to tell which portions of the falsely procured orders are valid and which parts of any order have unlawfully affected by the nefarious misconduct of the wayward officers of the courts.

> ***Only the United States District Courts are mandated to hear RICO cases, even when the allegations are against licensed attorneys who are also officers of the courts.***

Without supervisory review by the Supreme Court the Courts of our American people may become the best known exclusive enclave for RICO profiteering by unscrupulous licensed attorneys, the safe harbor for officers of the court who deceive to "win at any costs" and the unique "approving paymaster where attorney's fees are awarded for RICO misconduct.

A second basis for jurisdiction **Rule 10 (c) (iv)** exists because a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals.

The 8th Circuit, in **Handeen v. Lemaire**, 112 F. 3d 1339 (8th Cir. 1997) permits RICO claims against attorneys who as officers of the courts deceive courts. The 11th Circuit Court of Appeals, despite **Malauttea v. Suzuki Motor Co.**, 987 F. 2d 1536, 1537 (11th Cir. 1993) attorneys' candor duties to disclose unlawful RICO misconduct now provides the safe court-haven where attorneys may defraud courts and target litigants using the U. S. mails and interstate wires.

By its decision, the 11th Circuit court of Appeals appears to permit attorneys who deceive courts to be both rewarded with attorney's fees and to also avoid payment of treble RICO damages and or appropriate criminal prosecution.

Petitioner believes that she is right in stating, respectfully, that the RICO statute, 18 U. S. C. 1964 Civil Remedies, mandates subject matter jurisdiction.

The Petitioner also believes that the policy grounds cited at the conclusion of the Petition are worthy of consideration by this Honorable Court.

No judge should ever again be so intentionally deceived by any prosecutor, any defense attorney, any civil litigant or any

licensed attorney acting as an officer of any court for pay or for substantial profit.

No judge must any longer or ever again be forced to decide any case, to end any one's life, to order any period of incarceration, or to award any money judgment based, in whole or any part, on any officer of the court RICO manufactured false documents, tampered RICO evidence, or RICO agreed deceit.

RULE 14 (f) CONSTITUTIONAL AND STATUTORY PROVISIONS

The specific statutory provision granting subject matter jurisdiction to any United States District Court is:

18 U. S. C. 1964 Civil Remedies:

(a) **The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter.** ...including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) Any person injured in his business or property by reason of a violation of Section 1962 of this Chapter may sue therefore in **any appropriate United States district court** and shall recover threefold the damages that he [she] sustains and the cost of suit, including reasonable attorney's fees.

There does not seem to be an exclusion in the statute when the RICO participants are officers of the state or federal courts who defraud a victim or any state or federal court by USPS mail fraud or interstate fax.

The Petitioner seeks an extension of the ***Bivens*** doctrine such that officers of the courts are held accountable for damages just as any other unlawful state or federal officer or employee, when they ***act under color of law to procure state or federal court's orders by fraud to destroy or harm*** the 1st, 5th and 9th constitutional rights of a parent to worship with her child, to receive court's due process, and to enjoy the fundamental parent-child relationship.

RULE 14 (g) CONCISE STATEMENT OF THE CASE

1. **Basis for Federal Jurisdiction in the United States District Court for the Middle District of Florida.**

The specific statutory provision granting subject matter jurisdiction to any United States District Court is **18 U. S. C. 1964** Civil Remedies which states, in relevant part, that:

> The District Courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter. ...including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.
>
> (c) Any person injured in his business or property by reason of a violation of Section 1962 of this Chapter may sue therefore in **any appropriate United States district court** and shall recover threefold the damages that he [she] sustains and the cost of suit, including reasonable attorney's fees.

There does not seem to be **any** exclusion in the statute when the RICO participants are state or federal licensed attorneys who are officers of the courts who, for profit, defraud a targeted victim and any state or federal court by use of the USPS mail fraud or interstate fax in violation of the RICO statutes.

2. **Facts Material to the Questions Presented.**

a. The Courts Have Materially Deviated From the Congressional Mandate for District Court Subject Matter Jurisdiction.

During September, 2004, the Petitioner filed a federal RICO complaint with days after being ordered by a fraudulently elected Florida state court judge [Appendix Exhibit 1 – Florida Supreme Court order finding that the judge lacked judicial and personal character] to refrain from reporting to state or federal authorities the extensive obstruction of justice by RICO defendants to defraud courts, for profit, in Minnesota, California and Florida.

The case was never dismissed for failure to state a cause of action since the Petitioner filed a complex, well written, factually detailed Sixty-One (61) Count, 862 pages coherent RICO and Civil Rights Complaint.

> ***The Complaint contained very specific factual allegations outlining the specific acts of wire and mail fraud and the respective RICO agreements by licensed attorneys acting as state licensed officers of the state and federal courts***

The Petitioner has set out, ***supra*** in the Rule 14 (d) disclosures, the reasons why the District Court had subject

matter jurisdiction; why the 11th Circuit Court of Appeals was misled by the U. S. District Court clerk's miscaptioning of the appeal ***supra***, and the policy reasons why at least the District Courts must consider RICO misconduct, to include wire and mail fraud, by licensed officers of the courts, ***infra*** at **POLICY GROUNDS FOR REVIEW**.

Appendix Exhibits 2, 3, 4, 5, 6, and 7 set out how the clerk's office for the U.S.D.C. for the Middle District of Florida made an error in the case captioning and transmittal of the record to the 11th Circuit Court of Appeals.

b. Use of the U. S. mail and interstate wires to pursuant to the RICO agreement to deceive the courts to procure orders by fraud.

A licensed Minnesota attorney and leader of ***NORML*** and other officers of the courts in Minnesota, California and Florida, for profit and by agreement to "win at any cost" used the United States Postal Service and interstate faxes to conduct ***ex parte*** hearings, to defraud an impaired judge, and to procure courts orders from a Florida county judge declared by the Florida Supreme Court to lack both personal and judicial character after

she procured her judicial seat by election fraud. Florida Supreme Court, **Inquiry concerning a Judge,** Re: Nancy F. Alley, Case No., 97-01 dated October 7, 1997. [Appendix Exhibit 1]

Pursuant to the RICO agreement to use the interstate fax and USPS mail to defraud the courts, one or more of the officers of the courts then intentionally drafted and used a May 21, 2003 false sworn declaration confirmed as transmitted by the USPS and interstate fax to obtain a "cavalier order" written by one of the officers of the court and procured by mail and wire fraud. [On December 17, 2004, there was a Florida judicial finding that the May 21, 2003 sworn declaration was false].

As a result of the ongoing RICO plan and the action of licensed officers of the court, the mother and child have been held – for 2 years - in a 4 county area of Florida through a series of orders all entered after the use of the false sworn declaration.

In addition to the RICO damages she has incurred that exceed $342,000.00, the Petitioner presently remains unable to freely travel, unable to worship in her 7th generation Lutheran-American church, and unable to enjoy 5th amendment due

process or the mother-child relationships guaranteed by the 9th and 1st amendments due to the failure of any officer of the court to report the RICO misconduct.

In this case, unlike difficult to prove ordinary nefarious street racketeering or covert organized crime activities, the officer of the courts' unlawful misconduct is easily documented by their "Certificates of Service" and "attorney's verifications" attesting to their use of the United States Mail to submit the false sworn declarations and the verified petitions to procure courts' orders procured, or in the case of the **Alley** court enabled, by deceit.

Unlike the well known ***Webster Hubbell*** attorney fraud type use of the USPS to defraud clients through fa[illegible] invoices, these brazen RICO defendants, some greatly empowered by the ***Alley*** court, also submitted requests to the courts, by mail, for attorney's fees to fund the unlawful RICO misconduct.

The ***NORML*** law firm first suggested that a lie be told, under oath, to a Court pursuant to the plan of the father to deceive the courts. The unmarried father who was not paying child support then proceeded ***ex parte*** by wire and mail to

receive a favorable decision from a Minnesota Court. The ***NORML*** law firm charged Petitioner $10,000.00 extra for arranging, by interstate wire, the deceit on the court pursuant to the RICO plan of the unmarried non-child support paying father.

The father did then enlist the assistance of a California officer of the court to submit by the USPS mail and interstate fax from in or near Sanford, Florida a false sworn declaration to procure a California order by fraud for the purpose of illegally changing both home state of the child and the child custody from the mother to the non-support paying father.

The California officer of the court admittedly charged rates up to $650.00 an hour to unlawfully use the USPS mail and interstate wires to procure the "cavalier orders", drafted by the attorney, by deceit for profit.

The California fraudulent order procured by mail and or interstate wire fraud was then presented by the USPS mail, without any disclosure of the ongoing federal mail and wire fraud, to a Florida state judge who procured her judicial seat by election fraud, ***supra***.

When the mother, the Petitioner in this case, later proceeded pro se and fully disclosed the RICO plan and multi-state officer of the court misconduct to the Florida Judge, during August, 2004, the complicit state court judge instead of recusing herself upon proper motion proceeded to entered an order, ***perhaps to obstruct justice***, prohibiting your Petitioner from contracting any federal law enforcement or investigative agency.

Previous to the "obstruction of federal justice order", State Court Judge Nancy Alley entered orders taking custody of the 3 ½ year old child away from Petitioner in what later county court findings said had been precipitated with a turnover order for a "walk of terror" for the little boy who had never even seen his non-support paying father.

Additional orders were entered by the ***Alley*** court requiring the child to only visit Rachel Braaten, a Lutheran Sunday school teacher in a supervised "hell hole" with sexual perverts and drug addicts or with the non-support paying father standing guard over the Petitioner's car.

When Rachel Braaten advised the ***Alley*** county court that a RICO action was going to be filed, Judge Alley then

entered a State Court Order, sent to the Petitioner by the USPS mail, prohibiting Rachel Braaten from contacting state or federal law enforcement authorities.

Rachel Braaten then filed a second motion, pro se, to recuse Judge Alley. With a new judge, Petitioner then proceeded pro se through a week long trial in December, 2004, in which, despite the ongoing RICO misconduct she regained at least joint parenting by presenting sufficient evidence to elicit a state court's finding that a false sworn declaration was used, with a California officer of the courts' attestation, through the United States Mail to affect the change of custody.

Perhaps with judicial review, the Courts will be able to begin or again assure that all federal and state judges will only make decisions and enter orders based on truth.

Judges obligated by their oaths of office to assure and to deliver justice may no longer permit or empower officers of the court to betray their special trust and confidence to any court.

No judge should have to enter a questionable or unlawful order from the fog of officer of the court deceit.

ARGUMENT

SPECIFIC CONGRESSIONAL GRANT OF DISTRICT COURT SUBJECT MATTER JURISDICTION

18 U. S. C. 1964 Civil Remedies provides that Rachel Braaten, as the target of RICO misconduct by officers of the court, could file a RICO complaint, for treble damages, in any appropriate district court.

EXTENSION OF THE RICO MANDATE

Petitioner also sought, and continues to seek, a decision extending Sedima, **S.P.R.L. v. Imrex Company, Inc.,** 472 U. S. 479 (1985) such that the RICO statute's "remedial purposes" would protect America's state and federal courts against licensed attorneys and other officers of the courts who use the U. S. mail or interstate wires to commit fraud and mislead courts to procure any orders or decision. [Appellant's Appendix Exhibit 6, page 4] where Appellant stated as follows:

> **"I believe that my best hope for the reforming of duties of officers of courts and or Judge's duties can be accomplished through a 11th Circuit Court of Appeals Decision".**

Appellant recognized that after the public sanctions for Assistant Attorney General Webster Hubbell and his resulting conviction for attorney-client United State Mail Fraud [18 USC 1341] and or Interstate Wire Fraud [18 USC 1343] that intentional and sustained deceit on courts by its licensed officers is a very aggravated egregious kind of systemic profitable fraud.

Certainly when the goal is to mislead a judge then the officer of the court actions are very detrimental to the state and federal judicial systems.

Judges misled cannot properly administer justice when ***our*** courts, not some street business, are also the target of any RICO scheme and enterprise.

The 11th Circuit failed to consider that the Petitioner properly pled in the Amended RICO Complaint and also in the Second Amended Complaint which was attached to Plaintiff's Response to the Magistrate's Report sufficient facts to prove both Mail Fraud and the Conspiracy to Commit Mail Fraud by licensed attorneys who were officers of the State and Federal Courts consistent with the standard in the 11th Circuit as follows:

> The elements of wire fraud under 18 U.S.C. § 1343 are (1) intentional participation in a scheme to defraud and (2) use of the interstate wires in furtherance of the scheme. **United States v. Ross, 131 F.3d 970, 984 (11th Cir.1997).** [Footnote omitted.] To "cause" the interstate wires to be used, the use of the wires need not be actually intended; it need only be reasonably foreseeable. *Id.* at 985.

A CASE OF FIRST IMPRESSION?

Petitioner apologizes to the Court for documenting officer of the court attorney engineered misconduct to include ***mail and wire fraud intentionally designed and implemented to deceive the courts to procure court's orders by fraud for profit.***

However the RICO statutes mandate to the District Court subject matter jurisdiction for RICO complaints ~~even~~ especially when the Complaint names, as defendants, attorneys who are officers of the courts.

The 8th Circuit Court of Appeals in **Handeen v. Lemaire**, 112 F. 3d 1339 (8th Cir. 1997) has made it quite clear that licensed attorneys who are officers of the courts may be liable for RICO activities by stating that:

> "While an attorney who provides ordinary professional assistance does not "participate in the conduct of the RICO

> enterprise, this is not to say that an attorney who associates with a RICO enterprise can never be liable under RICO; [an] attorney's license is not [an] invitation to engage in racketeering and the lawyer no less than anyone else is bound by the RICO act".

Petitioner argues that the facts disclosed pertaining to the RICO defendants in this case are more egregious because the officers of the courts set out to intentionally engineer deceit of the courts and some clients to procure courts' orders by fraud for profit using the United States mail and interstate wire fax.

It can be argued that by the District Court's failure to accept the Congressional mandate for subject matter jurisdiction of the RICO allegations well pled in the Petitioner's complaint, as amended, that the United States District Courts thereby become profitable safe havens for nefarious attorneys who intentionally engineer mail and wire fraud on the courts..

Petitioner believed, in filing the original complaint that the 11th Circuit Court of Appeals and the United States District Court for the Middle District of Florida were bound by their own precedent to hold attorneys to some level of candor as stated in

Malauttea v. Suzuki Motor Co., 987 F. 2d 1536, 1537 (11th Cir. 1993) as follows:

> "All attorneys, 'as officers of the court', owe duties of complete candor and primary loyalty to the court before which they practice. An attorney's duty to a client can never outweigh his or her responsibility to see that our system of justice functions smoothly. This concept is as old as common law jurisprudence itself".
>
> Judge Marvin Aspen, then the chief judge for the Northern District of Illinois added:
>
> Just as many lawyer's "gossip" about judges, judges discuss lawyers and share stories of unprofessional conduct so that when the "lawyer next appears before a colleague who has to make a close decision, who do you think will emerge the victor?" ***83 A. B. A. J. at 95.***
>
> The Courts emphasize that counsel's duty to inform exists even though "the new developments, new facts, or recently announced law may be unfavorable". ***In re Universal Minerals, Inc.*** 755 F. 2d 309, 313 (3d Cir, 1985).

Petitioner therefore argues that when any licensed attorney who is an officer of the court intentionally deceives any court, via the mail or fax, then the duty of full disclosure of the nature, effect and consequences of the deceit must lie solely with the deceiving officer and not with any other person or entity.

Petitioner believes, logically, that no order or decision of any court is valid when procured, in whole or in any material part, by the intentional fraud and deceit of any licensed attorney who is an officer of the court.

SIGNIFICANT DEPARTURE FROM USUAL COURSE

The District Court had Congressional mandated RICO subject matter jurisdiction. It erred on March 8, 2005, in dismissing the substantial RICO claims and the RICO defendants for lack of "subject matter jurisdiction".

The 11th Circuit Court of Appeals by failing to even consider the RICO appeal erred, on May 11, 2005 and June 27, 2005 in considering ***only the non-final non-appealed non-RICO part*** of the March 8, 2005 Order transmitted by the District Court clerk's error.

Congress directed that RICO be "liberally construed to effectuate its remedial purposes". **Organized Crime Control Act of 1970**, Public Law No. 91-452, Tit. IX, 84 Stat. 941 (1970. The Congressional directive is a mandate. **United States v.**

Long, 651 F. 2d 239, 241 (4th Cir.), cert. denied, 454 U. S. 896 (1981).

> To the knowledge of the Petitioner, RICO is the only substantive federal criminal statute that contains such a directive and contains private attorney general provisions in 1964 c designed in part to fill prosecutorial gaps. **Sedima, S.P.R.L. v. Imrex Company, Inc.,** 473 U. S. 479 (1985) at 491 n.10, 497-498; **Rusello**, 464 U. S. at 27; and **Reiter**, 442 U. S. at 344. RICO is to be read broadly. **Sedima,** 473 U. S. 479, at 497.

Its "remedial purposes" are nowhere more evident than in the provision of a private action for those injured by racketeering activity. **Sedima** at 498. RICO remains an aggressive initiative to supplement old remedies and to develop new methods for fighting crime . . . . [and] it is in this spirit that all of the Act's provisions should be read. **Sedima** at 498.

> RICO is integral to the effort of Congress to enlist the aid of civil claimants in deterring racketeering. **Alcorn County v. U. S. Interstate Suppliers, Inc**. 781 F. 2d 1160 at 1165 (5th Cir. 1984).

> What better use of a civil litigant is there than to find subject matter jurisdiction such that the bright lights of official inquiry may be shown on the racketeering actions by officers of the courts designed to procure courts' orders and attorney's fee awards by mail and wire fraud?

> Private litigation is one of the surest weapons for effective enforcement of the RICO law. It provides a significant supplement to the limited resources available to the government. **Leh v. General Petroleum Corp.**, 382 U. S. 59 (1965; **Minnesota Mining & Mfg. Co., v. New Jersey Wood Furnishing Co.**, 381 U. S. 311 at 318 (1965).

Accordingly, RICO's language must be read in the same broad fashion, whatever the character of the suit. **Sedima** 473 U. S. 479 at 489 and **Plains Resources Inc. v. Gable**, 782 F. 2d 883, 886 (10th Cir. 1986).

Petitioner met her affirmative duty to plead RICO claims. ***In fact, the Complaint, as amended, was not dismissed for failing to state a cause of action.***

Petitioner now respectfully argues that the District Court has federal subject matter jurisdiction as the RICO statute clearly establishes that the United States District Court shall hear such cases. **Merrill Dow Pharmaceuticals, Inc. v. Thompson**, 478 U. S. 804, 810 n. 6, 106 S. Ct. 3229, 3233 n. 6, 92 L. Ed. 2d 650 (1986) and **Leipzig v. AIG Life Insurance Co.**, 362 F. 3d 406, 410 (7th Cir. 2004.

RICO itself does not exempt professionals, as a class, from the law's proscriptions as stated in the **Handeen** case:

> An attorney's license is not an invitation to engage in racketeering, and a lawyer no less than anyone else is bound by generally applicable legislative enactment. ...[B]ehavior prohibited by Section 1962 c will violate RICO regardless of the person to whom it may be attributed, and we will not shrink when he crosses the line between traditional rendition of legal services and the active participation in directing the enterprise. The polestar is the activity in question, not the Defendant's status.... as an attorney or officer of the court. **Handeen v. Lemaire**, 112 F. 3d 1339 (8th Cir. 1997).

If subject matter jurisdiction is denied by the District and Appellate Courts to review the fraudulent or criminal misconduct of its court's officers, forever, then the present Appeal rules closing the door of review after 30 days encourages officers of the courts to take the chance and then trust they will not be exposed by "colleagues".

If the courts will permit RICO misconduct to deceive a judge or jury and then award attorney's fees to those who use the mail and fax to defraud courts what Constitutional entity, other than the courts, may act to restore the lost integrity of our courts?

EXTENSION OF BIVENS DOCTRINE

The Petitioner also seeks a change or furtherance of the existing law such that state licensed attorneys appearing as officers of state or federal courts, who illegally procure courts' orders under color of law, may be subject to ***Bivens*** claims for intentional violations of the Constitutional Rights of targeted victims and their small children.

Licensed attorneys, by their special status as officers of the court are empowered with enormous power to assist the courts and people. However, when that awesome power is used to target any litigant, witness, or even a defendant in any criminal matter then there is the potential for long term damage when the state or federal power is intentionally used to deprive any person of their 1st, 5th, 9th and 14th Amendment rights.

The law seems clear, to Petitioner as a RICO targeted mom and lay person, and on point as follows:

> The United States Supreme Court has held that "law and court" procedures that are fair on their faces but administered "with an evil eye or heavy hand" are discriminatory and violate the equal protection clause of the Fourteenth Amendment. ***Yick Wo v. Hopkins***, 118 U. S. 356 (1886).

> The U. S. Supreme Court has held that loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. ***Elrod v. Burns***, 427 U. S. 347; 96 S. C. 2673 (1976).

The Supreme Court has held that a parent's right to "the companionship, care, custody and management of her child" is an interest "far more precious" than any property right. ***May v. Anderson***, 345 U. S. 528 (533); 73 S. C. 840, 843 (1952).

> Parent's rights have been recognized as being "essential to the orderly pursuit of happiness by free man. ***Meyer v. Nebraska***, 92 S. Ct. 1208 (1972).

The Supreme Court has stressed that "the parent-child relationship is an important interest that undeniably warrants deference and absent a powerful countervailing interest – protection". A parent's interest in the companionship, care, custody and management of her children rises to a constitutionally secured right, given the centrality of family life as the focus for personal meaning and responsibility. ***Stanley v. Illinois***, 405 U. S. 645, 651; 92 S. C. 1208, (1972).

Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their

family life. If anything, persons faced with dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. The Supreme Court noted its "historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. ***Santosky v. Kramer***, 455 U. S. 745, 102 S. Ct. 1388 (1982).

> Strict Scrutiny is still required when the liberty guaranteed by the 14th Amendment denotes not merely freedom from bodily restraint but also the right of the individual to ...establish a home and bring up children and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. ***Meyer v. Nebraska*** 262 U. S. 390, 399 (1923).

The Supreme Court has clearly established that to constitute a compelling state interest, state interference with a parent's right to raise his or her child must be for the purpose of protecting the child's health or welfare. ***Wisconsin v. Yoder***, 406 U. S. 205, 230 (1972).

The Supreme Court has stated that the rights of parents to care, custody, and nurture their children is of such character

that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of our civil and political institutions, and such right is a fundamental right protected by the 1st, 5th, 9th and 14th Amendments. ***Doe v. Irwin***, 440 F. Supp. 1247; U. S. D. C. of Michigan (1985).

> No bond is more precious and none should be more zealously protected by the law as the bond between parent and child. ***Carson v. Elrod***, 411 F. Supp. 645, 649; DC E.D. Va. (1976).

The Courts have gone to great lengths to protect a parent's right to the preservation of her relationship with her child by stating that her rights derive from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on her ability to participate in the rearing of her child. A child's corresponding right to protection from interference derives from the psychic importance to him of being raised by a loving, responsible reliable adult. ***Franz v. U. S.***, 707 F. 2d 582, 595-599 (U. S. C. A. 1983).

The Supreme Court has made it perfectly clear that the liberty interest of the family encompasses an interest in retaining custody of one's children and, thus a ***state may not interfere***

with a parent's custodial rights absent due process. Langton v. Maloney, 527 F. Supp. 538, D. C. Conn. (1981).

> ***When state licensed and state and federal officers of the courts intentionally target a mother and use the U. S. mails and interstate wires to deceive judges to procure courts' orders by fraud then there is official state interference with a parent's custodial rights such that due process is not possible under any circumstances.***
>
> Fundamental Constitutional Rights are accorded a special status in judicial review. ***Washington V. Glucksberg***, 521 U. S. 702, 719 (1997).

On review, it is argued that not one court's order entered after May 21, 2003 is free from or unaffected by the false sworn declaration first used to deceive a court to procure all subsequent courts' orders by fraud.

> The U. S. Supreme Court has held that the deprivation of fundamental liberty rights 'for even minimal periods of time, unquestionably constitutes irreparable injury". ***Elrod v. Burns*** 427 U. S. 347, 96 S. Ct. 2673 (1976).

The depravation of equal access to justice by any officer of the court engaged in wire and mail fraud pursuant to any RICO agreement to procure court's orders to destroy

Constitutional rights is egregious behavior constituting irreparable damage to the core integrity of our sacred courts.

POLICY GROUNDS FOR REVIEW

Congress has specifically mandated subject matter RICO jurisdiction to ***any U. S. District Court*** and those courts must be even more vigilant when the RICO misconduct is intentionally and by agreement of officers of the court aimed at deceiving and defrauding courts for profit.

Judges must only enter orders and juries must only decide cases based on truthful evidence presented by honest licensed attorneys fulfilling great responsibilities as officers of the courts.

America's courts must not become either the exclusive domain or the restricted enclave for fraud by its licensed officers of the courts who profit through procurement of orders and decisions by confirmed fraud and deceit of our sacred system of justice.

Interstate wire and U. S. mail fraud used by agreement of officers of the courts to deceive any court is egregious unlawful misconduct that threatens the American system of justice.

Bivens must also be expanded to include damage awards for any litigant intentionally harmed by licensed officers of the courts, acting under color of law, who procure powerful court's orders or state or federal enablement or empowerment to willfully destroy or degrade any parent's Constitutional rights of a fair hearing; due process; the freedom to travel; the freedom to associate with one's family; the freedom to worship; and the freedom to fulfill the responsibilities of a parent to a child.

If the Courts will not prohibit and punish licensed attorneys acting as officers of the courts who are engaged in RICO misconduct to defraud courts to procure orders for profit and

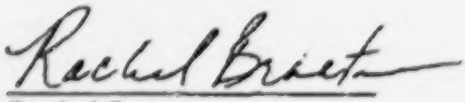
through fraud then what is left in our Republic that is worth preserving?

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted. No court may function as a Constitutional entity when it becomes the focused target of deceit by any of its officers. Unlike racketeering in the streets, mail and wire fraud is easier to prove when documents are certified by attorneys as sent by mail or interstate fax. The courts must not exist to reward those who commit RICO mail and wife fraud designed and used to deceive any judge or court. The courts must instead, as Congress mandates, punish those who commit RICO mail fraud and not reward them with attorney's fees, costs, and expenses.

September 8, 2005

Respectfully Submitted



Rachel Braaten
1331 Richmond Road
Winter Park, FL 32789
Tel. 507-581-0277

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 1

Rachel Braaten, Pro Se
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Winter Park, Fl 32789
Tel. 507-581-0277

SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A JUDGE,

NO. 97-01,

RE: NANCY F. ALLEY. No. 90,691

[October 9, 1997]

PER CURIAM.

We review the recommendation of the Judicial Qualifications Commission (JQC) that Circuit Judge Nancy F. Alley be disciplined by receiving a public reprimand. We have jurisdiction pursuant to Article V, section 12 of the Florida Constitution.

The Respondent was served with a Notice of Formal Proceedings by the Investigative Panel of the JQC alleging that during the campaign for Circuit Judge of the Eighteenth Judicial Circuit in the summer of 1996:

1. Alley knowingly misrepresented her qualifications and those of her opponent, in newspaper advertisements, by claiming: (a) to have circuit judicial experience, when in fact her service was that of a general master; and (b) that her opponent had no circuit judicial experience, when in fact she had extensive experience as a county judge who had been assigned to the circuit court.

2. Alley knowingly did the following in campaign mailers: (a) misrepresented her qualifications and those of her opponent; (b) injected party politics into a non-partisan election, by noting the party affiliation of the

same political party, which was different from that of the governor); (c) improperly included a photograph of her opponent sitting next to a criminal defendant noting that her opponent "defend[ed] convicted mass murderer, cop killer, William Cruse," when at the time of the photograph Cruse had not been convicted and her opponent was an assistant public defender observing a duty placed on her as a member of The Florida Bar; and (d) improperly included a portion of a newspaper editorial which falsely implied that Alley, not her opponent, had been endorsed by the newspaper.

The Respondent filed an answer admitting all the allegations and acknowledging that as a "candidate for judicial office [she] must exercise the most disciplined restraint upon the activities of her campaign." She further asserted that she had "learned a great lesson and has been deeply sensitized to the need for judges and judicial candidates to show judicial demeanor and restraint when they are required to run in a contested campaign." The Respondent further filed a waiver of a formal hearing before the Hearing Panel of the JQC.

The Investigative Panel concluded that the behavior of the Respondent constituted conduct unbecoming a member of the judiciary or a candidate for judicial office. The panel further indicated that the advertising violations were "very serious because they present significant impediments to an orderly and truthful electoral process, and because they raise serious questions of personal and professional integrity." However, in view of the response of the Respondent, which the panel found to be sincere, the panel, on behalf of the JQC, concluded "that the interests of

governor who had appointed her opponent to her position of county judge (when in fact both Alley and her opponent were members of the same political party, which was different from that of the governor); (c) improperly included a photograph of her opponent sitting next to a criminal defendant noting that her opponent "defend[ed] convicted mass murderer, cop killer, William Cruse," when at the time of the photograph Cruse had not been convicted and her opponent was an assistant public defender observing a duty placed on her as a member of The Florida Bar; and (d) improperly included a portion of a newspaper editorial which falsely implied that Alley, not her opponent, had been endorsed by the newspaper.

The Respondent filed an answer admitting all the allegations and acknowledging that as a "candidate for judicial office [she] must exercise the most disciplined restraint upon the activities of her campaign." She further asserted that she had "learned a great lesson and has been deeply sensitized to the need for judges and judicial candidates to show judicial demeanor and restraint when they are required to run in a contested campaign." The Respondent further filed a waiver of a formal hearing before the Hearing Panel of the JQC.

The Investigative Panel concluded that the behavior of the Respondent constituted conduct unbecoming a member of the judiciary or a candidate for judicial office. The panel further indicated that the advertising violations were "very serious because they present significant impediments to an orderly and truthful electoral process, and because they raise serious questions of personal and professional integrity." However, in view of the response of the Respondent, which the panel found to be sincere, the panel. on behalf of the JQC. concluded "that the interests of justice and of the public welfare are adequately served by administration of a public reprimand."

We agree with the JQC. that Alley's actions were improper. However, we find it difficult to allow one guilty of such egregious conduct to retain the benefits of those violations and remain in office. Yet, we are constrained by the JQC's recommendation.[1]

Accordingly, we hereby command Judge Nancy F. Alley to appear before this Court for the administration of a public reprimanded at 9:00 a. m. on November 3, 1997, for the actions noted above.

It is so ordered.

KOGAN, C.J., OVERTON, SHAW, GRIMES, HARDING, WELLS and ANSTEAD, J.J. concur.

NO MOTION FOR REHEARING WILL BE ALLOWED.

Original Proceeding – Judicial Qualifications Commission

Thomas C. MacDonald, Ir. General Counsel for the Florida Judicial Qualifications Commission, Tampa, Florida.

For Petitioner

Richard C. McFarlain of McFarlain, Wiley, Csssedy & Jones, P. A. Tallahassee, Florida

For Respondent

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION INQUIRY CONCERNING A JUDGE, NO. 97-01

WAIVER

Nancy Alley, through counsel, waives a formal hearing before the Hearing Panel of the Florida Judicial Qualifications Commission.

Nancy F. Alley
Circuit Judge

Richard C. McFarlain
Fla. Bar No. 052803
McFARLAIN, WILEY, CASEDY & JONES, P. A.
215 S. Monroe Street, Suite 600
Tallahassee, Florida 32301
(904) 222-2107

Attorneys for Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above has been filed by hand this 27th day of May, 1997 with Thomas C. MacDonald, Jr. General Counsel, Florida Judicial Qualifications Commission, Room 102, The Historic Capital, Tallahassee, Florida 32399-6000.

Richard C. McFarlain

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 2

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RACHEL BRAATEN,

Plaintiff,

Case No. 6:04cv-1414-Orl-31KRS

MATTHEW THOMPSON, BEVERLY THOMPSON, NORMAN D. LEVIN, MATTHEW J. CAPSTRAW, NORMAN D. LEVIN, PROFESSIONAL ASSOCIATION (PA), CAROL GRANT, MARC KURZMAN, KURZMAN, GRANT & OJALA LAW OFFICES CHARTERED, NANCY ZALUSKY BERG, EDWARD J. THOMAS, NANCY F. ALLEY, GAIL A. ADAMS, DANIEL TRESSLER, NANCY DELONG, WILLIAM JOHNSON, and FRANK HOOVER,

Defendants.

ORDER

This matter comes before the Court for consideration of the Report and Recommendation issued by Magistrate Judge Spaulding on February 16. 2005 (Doc. 145). Objections to the Report and Recommendation were riled on behalf of Daniel Tressler (Doc. 143). Plaintiff filed a "Factual Response" (Doc. 164) and affidavit (Doc. 165) which the Court construes as an objection.

In his objection. Dr. Tressler points out that his involvement in the Florida state court proceedings was initiated by a Stipulated Order for Social Investigation entered by the circuit court of Seminole County. Plaintiffs "Response" raises no legal basis for rejection of the Report and Recommendation.

Accordingly, upon *de novo* review, it is

ORDERED that the Report and Recommendation is **CONFIRMED** and **ADOPTED** as part of this Order.

It is further **ORDERED** that Plaintiffs RICO claims are **DISMISSED** for lack of subject matter jurisdiction, and the following Motions are DENIED, as moot: Docs. 76, 77, 78, 82, 83, 84, *U,* 88, 90, 93, 94, *96,*113,124, and 129.

It is further **ORDERED** that the Motion at Doc. 100 is GRANTED, and the Amended Complaint is DISMISSED, without prejudice, as to these Defendants.

Plaintiff is given leave to file an amended complaint only as to her common law claims against Grant and Kurzman. Any such amended complaint shall comply with Fed. R. Civ. P. 8, and shall not, without prior leave of Court, exceed 30 pages in length.

DONE and **ORDERED** in Chambers, Orlando, Florida on March 8, 2005.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 3

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Rachel Braaten

Plaintiff

NOTICE OF APPEAL

vs.

Civil Action File No. 6:04-CV-1414-ORL-GAP-KRS

Matthew J. Thompson; Beverly Thompson;
Norman D. Levin; Matthew Capstraw;
Norman D. Levin, Professional Association (P.A.);
Carol Grant; Marc Kurzman;
Kurzman, Grant & Ojala Law Offices, Chartered;
Nancy Zalusky Berg; Edward J. Thomas;
Frank Hoover; Nancy F. Alley; Dr. Daniel Tressler;
Nancy DeLong, and William Johnson

Defendants

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT Rachel Braaten, Plaintiff, in the above named case does hereby Appeal to the United States Court of Appeals for the Eleventh Circuit from the Order dated March 8, 2005, denying subject matter jurisdiction of the federal question RICO claims [28 USCA 1331] and of the ***Bivens*** type federal civil rights issues [28

USCA 1343] concerning officers of the courts acting under color of law.

Plaintiff asserts that the Court has subject matter jurisdiction pursuant to 28 USC 1331 for the civil action arising under the United States Statutes concerning RICO as alleged in the Plaintiff's Complaint as amended.

Plaintiff assets that the Court has subject matter jurisdiction under 28 USC 1343 for the civil action [set forth in the response to the Magistrate's Report] claims alleging violations of federally guaranteed civil rights. Plaintiff maintains that Constitutional Questions may be raised at any time, and were timely raised, in the proceedings.

March 31, 2005

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 32789
Tel. 507.581.0277

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON March 31, 2005, that I filed the Plaintiff's Notice of Appeal of the March 8, 2005, order denying subject matter jurisdiction with the Clerk of the

Court and sent a true and correct copy of same by regular U. S. Mail with proper postage attached from Winter Park, Florida to the following named persons at the addresses they have of record with this Court listed as follows: Daniel Tressler, Matthew Thompson c/o Norman Levin; Norman D. Levin, P. A., Marc Kurzman, Joseph Lee, assistant Attorney General, Jeff Albinson and Mindy Miller, Marshall, Dennehey, Warner, Coleman & Goggin; Frank Hoover, Kaci Kohler Line Hill, Adams, Hall & Schieffelin, P A and Nancy DeLong; Gregory Wilson, Attorney General Michael Hatch, State of Minnesota.

March 31, 2005

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 32789
507.581.0277

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 4

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
George C. Young U.S. Courthouse and Federal Building
Office of the Clerk
SO North Hughey Avenue
Orlando, Florida 32801
(407)835-4200
wwwflmd.uscourts.gov

Sheryl L. Loesch, Clerk
Orlando/Ocala. Division Manager

Laura Barsamian

DATE: April 1, 2005

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

RACHEL BRAATEN,

Plaintiff;

-vs-

Case No. 6:04-cv-1414-Orl-31KRS

CAROL GRANT, MARC KURZMAN, KURZMAN, GRANT & OJALA LAW OFFICES CHARTERED,

Defendants.

U.S.C.A Case No:

Enclosed are documents and information relating to an appeal in the above-referenced action. Please acknowledge receipt on the enclosed copy of this letter:

Honorable Gregory A. Presnell, United States District Judge appealed from.

Appeal filing fee was paid.

Certified copy of Notice of Appeal, docket entries, judgment and/or Order appealed from. Opinion was not entered orally.

SHERYL L. LOESCH, CLERK

BY: S/v. Franks, Deputy Clerk

Enclosure(s)

** Civil Appeal Statement Forms are available at www.ca11.uscourts.gov. They can also be obtained from the Clerk of Court of Appeals and from the Clerk of the U. S. District Court.

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 5

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

THOMAS K. KAHN
CLERK

For rules and forms visit
www.ca11.uscoarts.gov

May 10, 2005

Sheryl L. Loesch
Clerk, U.S. District Court
800 N *HUGHEY* AVE STE 300
ORLANDO FL 32801-2225

Appeal Number: 05-11882-GG
Case Style: Rachel Braaten v, Matthew J. Thompson District Court Number 04-01414 CV-ORL-31 - JCRS

The enclosed certified copy of this Court's order dismissing the appeal for lack of jurisdiction is issued as the mandate of this court &SS 1 lth Cir. R. 40-4 and 11th Cir. R. 41-4.

The district court clerk is requested to acknowledge receipt on the copy of this letter enclosed to the clerk.

Sincerely,

THOMAS K. KAHN, Cleric
RepJy To: Laccy Rearden/jt/ (404) 335-6176

End

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No.05-11802-G

RACHEL BRAATEN,

Plaintiff-Appellant,

versus

CAROL GRANT, MARC KURZMAN,et al,

Defendants-Appellees.

Appeal from the United States District Court for
The Middle District of Florida

Before, BIRCH, BARKETT, AND HULL, Circuit Judges"

BY THE COURTT:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction. Since appellant elected to amend her complaint, the district court's March 8, 2005, order granting the defendants' motions to dismiss and granting leave to amend the complaint is not final and appealable. 28 U.S.C. § 1291; see Briehler v. City of Miami. 926 F.2d 1001, 1003 11th Cir. 1991).

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 1 lth Cir. R. 40-4 and all other applicable rules.

Rachel Braaten
1331 RICHMOND RD
WINTER PARK FL 32789-5060

May 10, 2005

Appeal Number: 05-11802-GG

Case Style: Rachel Braaten v. Matthew J. Thompson

District Court Number: 04-01414 CV-ORL~3I-KRS

TO: Sheryl L. Loesch

CC: Rachel Braaten

CC: Joseph Hwan-Yul Lee

CO Norman D. Levin

CC: Marc G. Kurzman

CC: Administrative File

CC: Administrative File

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 6

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
ATLANTA, GEORGIA
APPEALS CASE NO. 05-11802 - G

Rachel Braaten, Appellant

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson, Respondents

---

PETITION FOR Fed. R. App. Pro. RULE 40 PANEL REHEARING

NOW COMES THE APPELLANT, and for her Petition for Rule 40 Panel Rehearing, does state as follows:

FACTS

1. On May 10, 2005, the Panel entered its decision in a matter entitled Rachel Braaten versus Carol Grant, Marc Kurzman et al which had not been Appealed by the Appellant.

2. The District Court Order of March 8, 2005, Order had two parts:

A. A Non-Final Part that was not Appealed by the Appellant but somehow was considered by the 11th Circuit Court of Appeals Panel resulting in the May 10, 2005 Decision of the Court in a case improperly or not fully Captioned on Appeal.

B. A Final Part which was on Appeal by the Appellant that has not been considered by the Panel and was properly captioned as set forth above and as styled herein.

3. The Notice of Appeal filed by the Appellant on March 31, 2005 in the District Court appealed the Final Order dated March 8, 2005, dismissing the above captioned Defendants in a RICO subject matter claim. [Appellant's Appendix Exhibit 1].

4. The March 8, 2005, Order dismissing the substantial RICO claims of the Plaintiff was final as to the above named RICO Defendants.

APPLICABLE STATUTORY LAW

SPECIFIC CONGRESSIONAL GRANT OF DISTRICT COURT SUBJECT MATTER JURISDICTION

5. 18 U. S. C. 1964 Civil Remedies provides that Plaintiff Rachel Braaten could file a RICO complaint in any appropriate district court as follows:

> (a) **The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter**. ...including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.
>
> (b) Any person injured in his business or property by reason of a violation of Section 1962 of this Chapter may sue therefore in **any appropriate United States district court** and shall recover

> threefold the damages that he [she] sustains and the cost of suit, including reasonable attorney's fees.

EXTENSION OF RICO MANDATE TO INCLUDE REMEDIAL PROTECTION AGAINST OFFICER OF COURT DECEIT IN THE PROCUREMENT OF COURTS ORDERS AND LIFE CHANGING DECISIONS

6. Plaintiff also sought, and continues to seek, a Decision extending **Sedima, S.P.R.L. v. Imrex Company, Inc.,** 473 U. S. 479 (1985) such that the RICO statute's "remedial purposes" would protect America's State and Federal Courts against deceit designed and implemented by licensed attorneys and other officers of the courts who commit fraud and mislead courts to procure any or life-changing Orders and Decisions. [Appellant's Appendix Exhibit 2, page 14] where Appellant stated as follows:

> **"I believe that my best hope for the reforming of duties of officers of courts and or Judge's duties can be accomplished through a 11th**

Circuit Court of Appeals Decision".

7. Appellant recognized that after the public sanctions for Assistant Attorney General Webster Hubbell and his resulting conviction for attorney-client United State Mail Fraud [18 USC 1341] and or Interstate Wire Fraud [18 USC 1343] that intentional and sustained deceit on courts by its licensed officers is a more egregious kind of systemic fraud and certainly more detrimental to the state and federal judicial systems, and the proper administration of justice, than most non-attorney licensed RICO schemes aimed at just "street type" business targets.

8. Appellant has properly plead in the Amended RICO Complaint and also in the Second Amended Complaint which was attached to Plaintiff's Response to the Magistrate's Report sufficient facts to prove both Mail Fraud and the Conspiracy to Commit Mail Fraud by licensed attorneys who were officers of the State and

Federal Courts consistent with the standard in the 11th Circuit as follows:

> The elements of wire fraud under 18 U.S.C. § 1343 are (1) intentional participation in a scheme to defraud and (2) use of the interstate wires in furtherance of the scheme. **United States v. Ross, 131 F.3d 970, 984 (11th Cir.1997).** [Footnote omitted.] To "cause" the interstate wires to be used, the use of the wires need not be actually intended; it need only be reasonably foreseeable. *Id.* at 985.

A CASE OF FIRST IMPRESSION

9. Appellant apologized to the Court for documenting attorney misconduct tin include mail and wire fraud and also the election fraud of sitting Judge who by Florida Supreme Court decision had been found to have procured her judicial position by fraud as Appellant said:

> "It remains unfortunate that this case appears to be one of first impression since those within the profession of law do not see anything wrong with a RICO enterprise designed by admission, **and furthered**

> **through their on the record behavior**, to defraud courts. I have initiated these proceedings, and invoked the jurisdiction of the Federal Courts, because of the irreparable harm to me and to my son, to recover damages, and also because I seek an extension to existing law.
>
> I believe that I am entitled to raise Constitutional issues at any point in the proceedings. I am informing the Court that I am raising Constitutional Issues. My second Amended Complaint, attached, contains my first draft of those claims.
>
> The Second Amended Complaint was hasty due to only giving me 10 days to respond to the Magistrate Judge's Recommendation or forever losing my rights taken from me by fraud. [Petition Appendix 2, Page 8, last 3 paragraphs].

ARGUMENT

10. The District Court had subject matter jurisdiction and erred on March 8, 2005, in dismissing the RICO claims and the RICO defendants for lack of "subject matter jurisdiction".

11. The 11th Circuit Court of Appeals erred, on May 11, 2005, in considering the non-final part of the March 8, 2005 Order permitting the Appellant to file an Amended Complaint for fraud against the remaining Defendants Marc Kurzman and his attorney wife Carol Grant.

12. Congress directed that RICO be "liberally construed to effectuate its remedial purposes". Organized Crime Control Act of 1970, Public Law No. 91-452, Tit. IX, 84 Stat. 941 (1970.

13. The Congressional directive is a mandate. **United States v. Long**, 651 F. 2d 239, 241 (4th Cir.), cert. denied, 454 U. S. 896 (1981).

14. This is the only substantive federal criminal statute that contains such a directive and contains private attorney general provisions in 1964 c designed in part to fill prosecutorial gaps. **Sedima, S.P.R.L. v. Imrex Company, Inc.**, 473 U. S. 479 (1985) at 491 n.10, 497-498; Rusello, 464 U. S. at 27; and Reiter, 442 U. S. at 344.

15. RICO is to be read broadly. **Sedima**, 473 U. S. 479, at 497.

16. Its "remedial purposes" are nowhere more evident than in the provision of a private action for those injured by racketeering activity. **Sedima** at 498.

17. RICO remains an aggressive initiative to supplement old remedies and to develop new methods for fighting crime . . . . [and] it is in this spirit that all of the Act's provisions should be read. **Sedima** at 498.

18. RICO is integral to the effort of Congress to enclose the aid of civil claimants in deterring racketeering. **Alcorn County v. U. S. Interstate Suppliers, Inc**. 781 F. 2d 1160 at 1165 (5th Cir. 1984).

19. Private litigation is one of the surest weapons fore effective enforcement of the RICO law and it provides a significant supplement to the limited resources available to the government. **Leh v. General Petroleum Corp**., 382 U. S. 59 (1965; **Minnesota Mining & Mfg. Co., v. New Jersey Wood Furnishing Co**., 381 U. S. 311 at 318 (1965).

20. Accordingly, RICO's language must be read in the same broad fashion, whatever the character of the suit. **Sedima** 473 U. S. 479 at 489 and **Plains Resources Inc. v. Gable**, 782 F. 2d 883, 886 (10th Cir. 1986).

21. Appellant met her affirmative duty to plead RICO claims. Appellant now demonstrates that the District court has federal subject matter jurisdiction as the RICO statute clearly establishes that the United States District Court shall hear such cases. **Merrill Dow Pharmaceuticals, Inc. v. Thompson**, 478 U. S. 804, 810 n. 6, 106 S. Ct. 3229, 3233 n. 6, 92 L. Ed. 2d 650 (1986) and **Leipzig v. AIG Life Insurance Co**., 362 F. 3d 406, 410 (7th Cir. 2004.

22. Given the importance of the breach of the integrity of the state and federal courts by the RICO defendants who targeted for profit the Appellant as a victim for unlawful misconduct to include wire fraud, mail fraud, obstruction of justice, perjury and subornation of perjury, the District Court, if remanded, should not permit any "insubstantiality" claim or defense by any one or all of

the defendants. The "insubstantiality" claim is only rarely employed and it should not be used as a shield by officers of the court engaged in serious RICO misconduct and denial of Appellant's significant Constitutional rights. **Bell v. Hood**, 327 U.S. 678, 66 S. Ct. 773, 90 L. Ed. 939 (1946).

23. Rico itself does not exempt professionals, as a class, from the law's proscriptions. An attorney's license is not an invitation to engage in racketeering, and a lawyer no less than anyone else is bound by generally applicable legislative enactment. ...[B]ehavior prohibited by Section 1962 c will violate RICO regardless of the person to whom it may be attributed, and we will not shrink when he crosses the line between traditional rendition of legal services and the active participation in directing the enterprise. The polestar is the activity in question, not the Defendant's status.... as an attorney or officer of the court. **Handeen v. Lemaire**, 112 F. 3d 1339 (8th Cir. 1997).

24. It appears that within the group of licensed attorneys and officers of the court named as RICO Defendants in this matter there is a fundamental misunderstanding of the duty of candor to the court as stated in **Malauttea v. Suzuki Motor Co.**, 987 F. 2d 1536, 1537 (11th Cir. 1993).

> "All attorneys, 'as officers of the court', owe duties of complete candor and primary loyalty to the court before which they practice. An attorney's duty to a client [Editorial note by Appellant Rachel Braaten – ie., little Christian presently age 5 and his best interests] can never outweigh his or her responsibility to see that our system of justice functions smoothly. This concept is as old as common law jurisprudence itself".
>
> Judge Marvin Aspen, then the chief judge for the Northern District of Illinois added:
>
> Just as many lawyer's "gossip" about judges, judges discuss lawyers and share stories of unprofessional conduct so that when the "lawyer next appears before a

> colleague who has to make a close decision, who do you think will emerge the victor?" *83 A. B. A. J. at 95.*
>
> The Courts emphasize that counsel's duty to inform exists even though "the new developments, new facts, or recently announced law may be unfavorable". ***In re Universal Minerals, Inc.*** 755 F. 2d 309, 313 (3d Cir, 1985).

REMEDIES

25. Appellant recognized the need for intervention by the 11th Circuit Court of Appeals when she stated at the District Court Level:

> "I believe that court's orders procured by officer of court fraud are "null and void" and good written evidence of officer of the courts' documented misconduct and crimes within the "sacred venue" they are sworn, and trusted to serve and to protect.
>
> I believe that only the federal system of justice is capable of recapturing the integrity of the courts from misguided officers of the courts.
>
> I accept that this case must go to the 11th Circuit Court

> of Appeals at an early stage as my objective is to seek an extension of existing law in addition to addressing the harm done to me and my son as Christian-Americans".
>
> Unlike street police officers who can just rough up the Constitutional Rights of an accused rather, I believe that attorney officers of the court must be held to even higher standards since as state licensed officers of the since courts they can change lives forever as they destroy the Christian-American parent-child relationship for generations". [Petition Appendix Exhibit 2, page 14, 15].

26. Appellant in her status as a Plaintiff sought the following remedies for the protection of the integrity of the state and federal courts by stating as follows:

> **CHANGE IN THE LAW**
>
> "I also seek a change or furtherance of the law such that state licensed attorneys appearing as officers of state or federal courts may be subject to ***Bivens*** claims for intentional violations of the Constitutional

Rights of Christian-Americans and even their infant children.

I do so believe that unlike an on the street law enforcement official that lasting damage may be done to any Christian-American when licensed attorneys, appearing as officers of the courts, intentionally deceive any court to deprive any Christian-American of their due process rights or equal access to the courts.

I also seek and expansion of the ***Rooker-Feldman Doctrine***, since I believe that the intentional behavior, including unlawful conduct of a licensed attorney appearing as an officer of the court to deprive any Christian-American of her maternal-child rights to associate, worship, travel, and due process is reviewable by a United States District Court. I therefore believe that there should be the ***Norman Levin exception*** to the ***Rooker-Feldman Doctrine.***

If subject matter jurisdiction is denied to review the fraudulent or criminal misconduct of its officers, forever, then the present rules closing the door of review after

> 30 days encourages officers of the courts to take the chance and then trust they will not be exposed by "colleagues". That having failed then there is always the extreme Norman Levin method of false imprisonment in the hellhole with the drug addicts and sexual perverts to "discombobulate" them.
>
> I believe this Court should adopt a ***Norman Levin*** fraud and crimes exception to the ***Rooker-Feldman Doctrine***". [Appellant's Petition Appendix 2, pages 20 and 21.

27. As a Professor of Humanities Appellant is aware that history demonstrates that the core difference between civilization and chaos is citizen and governmental access to and trust in courts of impartial justice.

WHEREFORE APPELLANT RESPECTIFULLY PRAYS FOR:

1. Reconsideration as the Panel did not previously review the Notice of Appeal Filed by the Appellant of the Final Provisions of the March 8, 2005, District Court Order.

2. Issuance of the Appropriate Order given the serious breaches to the integrity of the State and Federal Courts by licensed attorneys and officers of courts.

May 19, 2005 Respectfully Submitted

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 52789
Tel. 507-581-0277

CERTIFICATE OF COMPLIANCE

Appellant certifies that Times Roman 14 proportioned spaced font has been used through this Petition and it does not exceed the 15 page limitation set forth in Fed. R. App. Pro. 40-4 b.

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 52789
Tel. 507-581-0277

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON May 19, 2005, that I Mailed to the Clerk of the 11th Circuit Court of Appeals an Original and 4 Copies of the Appellant's Petition for Rule 40 Rehearing and the Appellant's Petition Appendix by the United States Postal Service Express Mail with a copy to the Clerk of the United States District Court Clerk in Orlando, Florida by Priority Mail and sent a true and correct copy of the Appellant's Petition for Rule 40 Rehearing and the Appellant's Petition Appendix by Priority U. S. Mail with proper postage attached from Winter Park, Florida to the following named persons at the

addresses they have of record with this Court, Matthew J. Thompson, c/o Norman D. Levin for Norman D. Levin and Norman D. Levin as counsel for Norman D. Levin, Matthew Capstraw, Norman D. Levin, P. A.,; to Richard E. Mitchell, Esq., for Marc Kurzman & Carol Grant, Suite 1400, 301 E. Pine Street, Orlando, FL 32802-3068; Joseph Lee, Assistant AG for Florida; Jeff Albinson, Marshall, Dennehey, Warner, Coleman & Goggin; Judge Frank Hoover [avoiding or ducking service] Janet W. Adams and Kaci Kohler Line, Hill, Adams, Hall & Schieffelin, P A; Gregory Wilson, and John S. Garry c/o Attorney General Michael Hatch and Mark Silverio.

May 19, 2005

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 32789

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 7

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO 05-11802 - GG

RACHEL BRAATEN

Plaintiff-Appellant,

CAROL GRANT,
MARC KURZMAN,
Et al,

Defendants-Appellees.

Appeal from the United States District Court
For the Middle District of Florida

Before BIRCH, BARKETT AND HULL, Circuit Judges:

BY THE COURT:

Appellant's May 19, 2005, "Petition for Panel Rehearing," construed as a motion for reconsideration of our May 10.2005, order dismissing this appeal for lack of jurisdiction, is DENIED.

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 8

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

Rachel Braaten
1331 Richmond Road
Winter Park, FL 32789

February 24, 2005

Clerk of Court Administrator
United States District Court
Middle District of Florida
Orlando Division
80 North Hughey Ave.
Orlando, FL 32801

Re: CASE NO. 6:04-cv-1414-Orl-,**RACHEL BRAATEN**, Plaintiff vs. **MATTHEW J. THOMPSON et al Defendants**

Dear District Court Clerk:

Attached for filing is the Plaintiff's Response with attached the "best efforts" under short time frame Second Amended Complaint setting forth factual basis for Plaintiff's ***Bivens***, RICO and fraud claims.

Sincerely,

Rachel Braaten, Pro Se

Copy to:
All Counsel for the Defendants of record

Enclosures:

Plaintiff's Response plus "best efforts" example of Second Amended Complaint

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Civil Action File No. 6:04-CV-1414-ORL-GAP-KRS

Rachel Braaten, Plaintiff

vs.

PLAINTIFF'S FACTUAL RESPONSE TO THE MAGISTRATE JUDGE'S REPORT DATED FEBRUARY 16, 2005

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson, Defendants

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PLAINTIFF'S FACTUAL RESPONSE TO THE MAGISTRATE JUDGE'S REPORT DATED FEBRUARY 16, 2005

NEWLY DISCOVERED EVIDENCE

The Amended Complaint was filed on December 13, 2004, pursuant to the Court's Order dated November 29, 2004. All of the officers of the courts and all of the judges involved prior to the December 13, 2004 trial in the

Seminole County Circuit Court where Plaintiff appeared pro se had seen nothing wrong with perjury and subornation of perjury.

Plaintiff as the victim of criminal and unlawful misconduct depriving Plaintiff of due process has a very keen sense of the damage to the Courts and to the Plaintiff and her small child than attorneys being paid to cover-up perjury and their own subornation of perjury.

Plaintiff, without the assistance of counsel meticulously went through the process of going over line by line of a May 21, 2003 sworn declaration prepared by either Edward Thomas or Norman Levin and submitted by Matthew Thompson to the Kern County Superior Court.

On December 17, 2004, in the Seminole County Circuit Court, Judge Clayton Simmons found that Matthew Thompson had made misrepresentations in the May 21, 2003 sworn declaration prepared by either Edward Thomas or Norman Levin.

The Findings of Fact of Judge Clayton Simmons of December 17, 2004, were subsequent to the filing of the Amended Complaint in his matter on December 13, 2004.

I view the Amended Complaint of December 13, 2004, as "notice" to Norman Levin that he was engaged in obstruction of justice. During the trial of December 13, 2004, Norman Levin tried desperately to cover-up the perjured sworn declaration of Matthew Thompson. As a paid officer of the Court, Norman Levin failed to report the perjury.

As a pro se mom without counsel I rose to the level of proof required to show that what we mom's call a crime was committed however I remain understanding **that attorneys would call the process of submitting a false sworn declaration to a court a "billable hour".**

I recognized the difficulty of cracking open the lock-stepped process where the attorneys covered-up their fraud and so I pleaded in the Amended Complaint of December 13, 2004, the following:

> 199. It is not possible for Plaintiff to yet plead with particularity all instances of mail and wire fraud that advanced, furthered, executed and concealed the Thompson/Levin/Thomas/Capstraw scheme because the particulars of many such communications are (or were) within the exclusive control and are within the exclusive knowledge of the

Defendants and/or other presently unknown individuals.

200. By way of example, however – Matthew Thompson, Beverly Thompson, Marc Kurzman, Carol Grant, William Johnson, Frank Hoover, Edward Thomas, Nancy Berg, Norman Levin, Matthew Capstraw, Gail Adams, Nancy Alley, Nancy DeLong and Daniel Tressler specifically used the U. S. Postal Service or interstate wires or caused the U. S. Postal Service or interstate wires letters, correspondence, coversheets, envelops, and pieces of stationary and to delivery all of the following communications, among others, for the purpose of advancing, executing, furthering, and concealing the Thompson/Levin/Thomas/Capstraw scheme still ongoing in this District and in this Division.

I believe the Court can take judicial notice that documents sent form Sanford, Florida to Kern County, California go by the United States Postal Service and or the wired interstate fax.

As a pro se mom whose Constitutional right to fair trials and due process is at stake rather than as an attorney who is submitting bills across state's lines by the United States Postal Service, I believe that justice requires me to be able to have

leave of court to file an reformed and better pled Second Amended Complaint since there has been recently discovered evidence now that I have begun to crack open the cover-up and obstruction of justice.

I therefore attach and ask that the Second Amended Complaint be considered also as notice to the attorneys of record in this case of their higher duties to this court or for review by the 11th Circuit in considering whether I have ever received due process and whether the Second Amended Complaint, as updated, is a good place to start on remand.

As a pro se mom whose has not yet received a full due process trial, I read Rule 15 (d) as permitting me to Motion for leave to serve Supplemental Pleadings. I read that Rule to permit the Supplemental Pleading even though the original pleading was defective in a statement of a claim for relief.

As a pro se mom who has had her right to worship with her son taken away; who has had her freedom to travel with her son taken away; who has had her freedom taken away through false imprisonment; who has had to spend more than $370,000.00 and never received any attorney willing to assure

due process; and who had to go to state trial pro se on the date that the Amended Complaint was filed in this case to root out perjury and subornation of perjury that was being and is still being covered up, I believe I deserve the right to file and go to trial on an updated version of the Attached Second Amended Complaint for the following reasons:

A. The courts are not a place for attorneys to commit crimes or fraud.

B. It is the duty of the Judges, the Attorney General and licensed attorneys appearing as officers of the courts and not the duty of a pro se mom to assure that the courts permit equal access for peaceful resolution of disputes through due process.

C. I believe that once perjury and subornation of perjury are proved then each act of an officer of the court under that criminal and fraudulent misconduct is reviewable, forever, rather than hidden with the lapse of 30 days and the loss of any Appeal right.

D. Unlike street crime, I believe that once perjury and subornation of perjury are proved then each resulting document, including transcripts, letters, and orders, are "fruits of the crime" and "fruits of the fraud" and reviewable, forever, rather than hidden with the lapse of 30 days and the loss of any Appeal right.

E. Unlike street crime, I believe that a fraud on the court or a crime committed while an officer of the court on the court is an aggravated form of misconduct due to the special trust an confidence reposed in that officer by the people of the state and United States and by the Judicial System.

F. I once believed that Constitutional Rights were assured even to 5th and 6th generation Christian-Americans soccer coaches and Sunday school teacher moms; however I do understand, but fail to appreciate, that Courts sometimes place a higher value on assuring that attorneys get their billable hours even for submitting false sworn documents and suborning perjury.

G. I do not believe that the Courts should be the special province for officers of the court to profit from committing acts of fraud and crimes.

NEWLY DISCOVERED EVIDENCE PART TWO

ON INFORMATION AND BELIEF THE KERN COUNTY COURT SYSTEM IS BEING INVESTIGATED BY THE FBI. I UNDERSTAND THAT THERE WERE A NUMBER OF INNOCENT FAMLIES TORN APART THROUGH THE YEARS. I UNDERSTAND THAT SOME PEOPLE WERE IMPRISONED FOR MORE THAN 20 YEARS ON FABRICATED DOCUMENTS AND TESTIMONY. IN MY OWN PERSONAL CASE, I WAS DENIED THE RIGHT TO SPEAK, AS A CHRISTIAN SUNDAY SCHOOL TEACHER, AND THYE TOOK AWAY CUSTODY. THE CASE BEFORE ME INVOLVED A WOMAN WHO USED COCAINE AND THEY LET HER SPEAK AND GAVE HER BACK HER FOURT KIDS.

EXTENSION OF EXISTING LAW

So that future generations of Attorney Generals will be required to uphold the law rather than cover-up crimes and fraud committed by an officer of the court, I also filed the Complaint on September 28, 2004, to seek an extension of the law so that there is a crime and fraud exception to any prohibition for reviewing any order or decision procured through fraud by any officer of the court including a judge.

I believe that any order or decision procured by fraud of an officer of the court or by any judge is void by operation of law with such void status relating back to the date of procurement. I believe we need to hold officers of the court and judges accountable, rather than reward them, for crimes and fraud committed in their official and duty sworn status as an officer of the state or federal courts. I believe that an officer of the court (in falsely procuring a judge's signature is the law in some cases) and can do more harm than a police officer.

When an officer of the court is a bad officer and when they operate under color of law to falsely imprison, to irreparably change lives through perjury and subornation of

perjury, and when they put their own selfish, criminal or fraudulent interests above their sacred and sworn duty to the court they can do irreparable harm.

I recognize that I am different from a licensed attorney in that regard and that I stand alone in this court in that opinion. I am a professor of humanities and we study why countries fail rather than how to profit through a denial of due process.

I am prepared to argue for that extension either in this Court or before the 11th Circuit Court of Appeals as my grandfather, an attorney, took a mortar round in the head, had to have a plate placed in his head and almost went blind voice after defending those important principles in World War II.

I owe that to Christian as his mom because we moms from the birth of our children are subordinated to their best interest.

A CASE OF FIRST IMPRESSION

It remains unfortunate that this case appears to be one of first impression since those within the profession of law do not see anything wrong with a RICO enterprise designed by admission, **and furthered through their on the record**

behavior, to defraud courts. I have initiated these proceedings, and invoked the jurisdiction of the Federal Courts, because of the irreparable harm to me and to my son, to recover damages, and also because I seek an extension to existing law.

I believe that I am entitled to raise Constitutional issues at any point in the proceedings. I am informing the Court that I am raising Constitutional Issues. My second Amended Complaint, attached, contains my first draft of those claims.

The Second Amended Complaint was hasty due to only giving me 10 days to respond to the Magistrate Judge's Recommendation or forever losing my rights taken from me by fraud.

APOLOGY

I apologize to the Court and to the Defendants if any of my motives have clouded my mind such that my words appeared personal rather than the result of my observations as a Professor of Humanities. I have seen that no democracy has yet endured when its courts go sour. I recognize the requirement of civility even when I am the victim of official misconduct licensed and sanctioned by the Courts so that awards of "billable hours" could be racked up.

Norman Levin has appeared a bit testy now after so long invoking his faith many times when it was to his benefit. However I am not familiar with any faith that permits an officer of the court to lie, to suborn perjury, or to be paid for those frauds on the Courts we expect to deliver due process.

I have family members and good friends whom I love dearly who are members of the Jewish faith. These people have remained supportive in my quest to provide the court with the necessary documents to confirm that fraud and crimes have been committed against Christian, a 5 year old 7th[th] generation Christian-American and me.

The tricks used by Norman Levin to deceive the courts included his statements that he was stopping a deposition and when pressed he would say – no more questions – and when pressed he would say that he had to go to the temple. He was being paid "billable hours" to be at the depositions. I was at the deposition missing work and having my Christian faith harmed during the proceedings designed by the United States Constitution to guarantee "me "due process.

I have had to sit in Court and miss work (December 2003) while Norman Levin and Nancy Alley chatted about whether it was appropriate for her daughter to give a Jewish boy a Christmas present. At the time as a Christian-American I was not permitted to be with or worship with my son. Due to Nancy Alley and Norman Levin I was only able to give Christian his 2003 Christmas presents only in December, 2004 after I had disqualified Nancy Alley, presented the trial pro se, and regained the joint custody taken from me by the fraud of Norman Levin.

I have had to sit through a trial during the week of December 13, 2004 to December 17, 2004, suffering a bit from stage fright and low blood sugar. I was not permitted to eat

during the trial ***but Norman Levin was permitted to slurp chicken soup during the on the record court trial proceedings***.

It is the official court sanctioned discrimination against me as a Christian-American that I complain about. Norman Levin opened the door about his Jewish faith by closing my rights to a fair process and by stating that he had to go to the temple when the questions of his clients got to tough.

It is the conduct and misconduct and the fraud on the courts of Norman Levin that are inconsistent with my knowledge of the many observant members of the Jewish Faith that are the problem and not any bias on my part towards any faith.

I do know that Norman Levin would not let me have Christmas with my son. I do know that Norman Levin recently drafted a document denying me worship rights every Easter until my little Christian is a man. I am not aware of any observant Jew who does not know that we Christian-Americans practice our faith and worship the birth of Jesus in December and the death and resurrection of our Savior each Easter.

I believe Norman Levin got paid "billable" hours as an officer of the court operating under color of law, and with Nancy

Alley as the law for assuring that I never get to worship Easter with my Christian-American son. I am not aware that Norman Levin's embracing of the orthodox Jewish faith permits him to enter the temple free of the sin of falsely imprisoning a Christian-American or her little boy Christian or defrauding any court. I guess my comments may seem insensitive. I ask the court to please accept that not everyone is yet sensitive to the discrimination we Christian-Americans suffer from the behavior of officers of the courts insensitive to our faith.

I am aware that no officer of the court, other than Judge Clayton Simmons on December 17, 2004, sees anything wrong with officers of the courts first defrauding the courts and then submitting a request through the United States Mails for "billable hours".

DIFFERENCES

As a 6thth generation Christian-American raising a 7th generation 3 ½ to 5 year old Christian-American I am different than the attorney Defendants in this case.

As I was falsely interned in a hell hole with drug addicts and sexual perverts by Norman Levin, with his willing and

necessary ally Nancy Alley, all I could do was hug my also confined son and pray – I had no other help in America for the courts were closed by officers of the courts earning "billable hours" and violating any right I had to due process.

I vomited (perhaps in Court I will have to say I became nauseas) almost every time for as a Sunday school teacher believing in justice and humane treatment I was not prepared for the "false interment" and such official misconduct from the courts that I was raised to honor and to trust.

I am different in your court and I am pro se because no attorney will write anything bad, or report obstruction of justice, about their colleagues. What I sensed of attorneys was a pre-occupation about their "social calendars", about their "billable hours", and about their status rather than about one bit of concern about my Constitutional Rights.

One attorney saw something wrong but said she could not suffer the consequences for taking on or reporting Norman Levin. What kind of system of justice is that?

EVIDENCE OF FRAUD – NOT REVIEW OF ORDERS

I believe that this case is about the learned "misconduct" of officers of the courts. I believe that the transcripts and the documents submitted to courts are evidence of their misconduct; perhaps even the best evidence since William Johnson and Nancy Alley have even erased transcripts of wire conversations.

I believe that the court's orders are evidence of the misconduct and perhaps even crimes. I believe that Webster Hubbell's imprisonment for the use of the mails to transmit false attorney's invoices was a wake up call for the legal profession. I believe this case is more egregious because Webster Hubbell just sent "false bills" to clients by the United States Mail. Even Mr. Hubbell did not seem bold enough to submit false sworn documents to a Court. I think he went to prison for a little client misconduct. Where do officers of the court go who defraud the courts? According to Mr. Levin, to the country club for a party.

Here the attorneys used the United States Mail to send the false documents to the Courts, rather than just to a client, to "win at any costs". Their purpose, as set forth in the Matthew Thompson deposition was to defraud the Courts.

In the process, as officers of the courts, under color of law they deprived me of my freedom as I was falsely imprisoned after being a Sunday school teacher with drug addicts and sexual perverts. I was deprived of my right to worship with my son, and of my right to employment and even to travel.

> **I believe that my best hope for the reforming of duties of officers of courts and or Judge's duties can be accomplished through a 11th Circuit Court of Appeals Decision.**

I believe that court's orders procured by officer of court fraud are "null and void" and good written evidence of officer of the courts' documented misconduct and crimes within the "sacred venue" they are sworn, and trusted to serve and to protect.

I believe that only the federal system of justice is capable of recapturing the integrity of the courts from misguided officers of the courts.

I accept that this case must go to the 11th Circuit Court of Appeals at an early stage as my objective is to seek an extension of existing law in addition to addressing the harm done to me and my son as Christian-Americans.

Unlike street police officers who can just rough up the Constitutional Rights of an accused rather, I believe that attorney officers of the court must be held to even higher standards since as state licensed officers of the since courts they can change lives forever as they destroy the Christian-American parent-child relationship for generations.

I believe therefore that officers of the courts are subject to the **Bivens** claims as they act under color of the law when they are state licensed and appear and act as officers of the courts. I therefore seek such an extension of the law concerning Bivens Claims under 42 U. S. C. 1983. I acknowledge as contrary the views presented in the "unsworn" Motions of the state licensed attorneys who are officers of the courts.

NO BIAS

I apologize to the Court if my status as a 6th generation Christian-American and 4thrd generation American Legion auxiliary member and a Christian Sunday school teacher were misunderstood. I believed that it is my Constitutional Right to worship freely in my 6th generation Christian American church with my Christian American son that was at issue. When it came

to freeing Jewish interns in World War II it was my ancestors who helped bear that burden.

When it came to interning me as a Christian American and a Christian Sunday school teacher and my 3 ½ year old son in a hell-hole in Sanford, Florida it was Norman Levin as a man of the Jewish faith who abused his duty as a officer of the court and my Constitutional Rights in the process.

Sadly, I have noticed the following differences in the treatment of Christian Americans interposing their Constitutional Rights and the American lawyers earning a living as I have trooped through the American Courts.

1. Christian Americans invoking their Constitutional Rights are not permitted to bring food into the Courts whereas Norman Levin as a American of his own faith earning money from the Courts is permitted to slurp chicken noodle soup during trial proceedings.

2. Christian Americans invoking their right to worship freely with their Christian American children are ordered into hall holes of interment whereas Norman Levin of his own faith while exercising his right to receive money is permitted to tell court's officials of his country club plans for the evening.

3. Attorneys like Norman Levin can interpose the Jewish faith to cancel or stop depositions when they are scheduled by Christian Americans or when helpful to Norman Levin however when the depositions is scheduled by Norman Levin or the testimony or process is beneficial for his side it is alright for Norman Levin to avoid or skip temple.

4. When a Christian American has Constitutional Rights of worship at issue in a state court then the federal court imposes 14 day document filing limits for an Amended Complaint of significance for the Christian American whereas when an attorney of the Jewish faith wants to take 45 days off for either a frolic, a vacation or possibly to propose the overthrow of America's drug laws that is alright.

5. When an American of the Jewish faith attorney like Marc Kurzman or Judith Segelin has a duty to protect a Christian Americans right to worship freely with her Christian American son Marc Kurzman and Judith Segelin will take up to $109,000.00 and let another attorney of the Jewish faith earn a living while interning a Christian American in America but they will not protect the Christian Americans right to either freedom or to worship.

6. When an American of the Jewish faith attorney like Marc Kurzman has the continuing duty to be truthful with the

courts he instead sides with Norman Levin rather than be truthful with the court about the loss of one Christian American's right to freedom in America or the 6h[th] generation Christian American's right to worship in her Christian church with her 7[th] generation Christian American.

7. Nancy Alley, while a paid Florida judge, bantered with Norman Levin concerning the appropriateness of her child giving a Christmas present to a dating friend who was of the Jewish Faith. At the time, Nancy Alley was denying me access as a Christian American to celebrate Christmas with my Christian American son Christian.

8. Norman Levin as an American of the Jewish faith has drafted a "joint responsibility" paternity order where as a Christian American I am denied access every Easter for the remainder of Christian's minority to worship a Christian holiday as a Christian American.

9. Norman Levin as an American of the Jewish faith has drafted a "joint responsibility" paternity order where as a Christian American daughter of a Disabled American veteran disabled in his service to free interned members of the Jewish faith I am denied access every Memorial Day for the remainder of Christian's minority to worship a n American holiday embracing my father's grace and generosity under fire.

As a 7TH generation Christian American and a humble Sunday school teacher of faith, as a 4th rd generation American Legion auxiliary member, as the granddaughter of a World War II veteran and a ticketed candidate for governor of North Dakota I am not a biased person. I do believe in equal rights, equal treatment under the law and equal access to justice.

To be unlawfully interned, in America, by a member of the Jewish faith who both of my grandfathers risked their lives to free while the offending person is, admittedly, frolicking at the country club with money to be extracted from me is a form of tyranny under which no democracy has so far yet survived.

I can testify truthfully that Christian, age 3 ½ and I have been both tortured in America by Norman Levin. Perhaps that is why he had me ordered to the hell-hole. I can testify that I have been denied equal access to the courts by Norman Levin and by Edward Thomas as one or more of them makes up to $659.00 an hour.

It is Norman Levin who gratuitously and interposed his Jewish faith in and during proceedings to seek privileges and

immunities from the Court. Nancy Alley and Norman Levin would speak of Jewish faith traditions while both were highly paid while my Christian American rights to worship and to leave the court and go to earn a Christian American living were at issue. I was paying taxes for her salary and attorneys fees to hear them embellish the Jewish faith. I was at the time a single mom, a working mom and not able to be either a Sunday school teacher or my son's soccer coach.

Once Norman Levin has opened the door and played the Jewish faith, I believe I am free to properly tell this Court of my own Christian American status and how Norman Levin and Marc Kurzman have ganged up to destroy my freedom to earn a Christian American living and my Christian American right to worship in the 6th generation Christian American church of my choice..

Do "I have a lesser form of human rights" because my family is Christian American or because both of my grandfather's risked our families DNA and our total future to keep America and each American citizen free?

I believe that Christian Americans seeking protection from abuse at the hands of licensed officers of the court have equal access to the Courts as does an American of the Jewish faith merely making appearances for money and dishonoring their status as sworn officers of the courts.

CIVIL RIGHTS

This case is not about the review of state court's decisions it is about the misconduct of officers of the courts and an impaired judge, about a judge who procured her judicial seat by fraud, and about a judge who erases interstate wire transcripts.

The case is brought to review the misconduct by those with special duties to uphold the law, including the United States Constitution.

The case if brought by a 6th generation Christian-American seeking damages for RICO interference by private parties and ***Bivens*** claims for interference with a mother-child(rens)'s right to worship, a child-mother's right to travel, and a mother and child(ren)'s rights to due process as 6th[th] and 7[th] generation Christian American citizens.

CHANGE IN THE LAW

I also seek a change or furtherance of the law such that state licensed attorneys appearing as officers of state or federal courts may be subject to ***Bivens*** claims for intentional violations of the Constitutional Rights of Christian-Americans and even their infant children.

I do so believe that unlike an on the street law enforcement official that lasting damage may be done to any Christian-American when licensed attorneys, appearing as officers of the courts, intentionally deceive any court to deprive any Christian-American of their due process rights or equal access to the courts.

I also seek and expansion of the ***Rooker-Feldman Doctrine***, since I believe that the intentional behavior, including unlawful conduct of a licensed attorney appearing as an officer of the court to deprive any Christian-American of her maternal-child rights to associate, worship, travel, and due process is reviewable by a United States District Court. I therefore believe that there should be the ***Norman Levin exception*** to the ***Rooker-Feldman Doctrine.***

If subject matter jurisdiction is denied to review the fraudulent or criminal misconduct of its officers, forever, then the present rules closing the door of review after 30 days encourages officers of the courts to take the chance and then trust they will not be exposed by "colleagues". That having failed then there is always the extreme Norman Levin method of false imprisonment in the hellhole with the drug addicts and sexual perverts to "discombobulate" them.

I believe this Court should adopt a ***Norman Levin*** fraud and crimes exception to the ***Rooker-Feldman Doctrine.***

FACTUAL STATEMENT PERMITTED BY THE FEBRUARY 16, 2005, REPORT OF THE MAGISTRATE JUDGE

A. I admit that on December 13, 2004, that I was "discombobulated" and "disoriented" in my pleadings. How would you be if your trust in the American courts was gone? How would you be if you did not get to go home tonight and instead Norman Levin had the power to hole you up with your grand-son with drug addicts and sexual perverts?

B. I was "discombobulated" and "disoriented" in the Amended Complaint for the following reasons:

Fact # 1. I am a 7th generation native born American.

Fact # 2. Unlike Elien Gonzalez, who washed ashore as a "non-citizen and was "embraced" and protected by judicial review due to his "non-citizen" status, my son Christian was born of me, (6th generation American citizen) on Minnesota soil (7th generation).

Fact # 3. Since washed ashore children have the right to come into the United States District Court to determine their "status", I believed on December 13, 2004, that my son and I had the status to ask this Court to determine when and to what extent our Constitutional Rights had been impaired and to determine to what we were entitled to as victims of unlawful misconduct designed to deceive America's courts and to destroy our lives as American citizens where a Kern County Superior Court Judge "temporarily sitting" would not let me speak in court; where Nancy Alley in the Seminole County Circuit Court had me falsely imprisoned; and where a Minnesota Judge and Nancy Alley cause a transcript of their talks erased as they decided

Fact # 4 No Judge until Clayton Simmons on December 13 to 17, 2004 saw anything wrong.

Fact # 5	No Florida or Minnesota Attorney General even now sees anything wrong.
Fact # 6	No attorney ever and even now sees anything wrong.
Fact # 7	I trust this Court and a lay jury to see the wrong.
Fact # 8	As I recover from the false interment arranged by Norman Levin while he was free for temple, I am able to present pleadings – quickly – in response to Court's Orders and Rules.
Fact # 9.	I came to this court pro se, as a Christian, and was held to a 2 week pleading status, while engaged in a week long trial pro se to regain custodial rights to my 7th generation American citizen whereas Jewish attorneys who frolic on vacations and trips are permitted to just scoot out from any obligation to this Court on a "whim" for periods of up to 45 days.
Fact # 10.	A part of my discombobulation on December 13, 2004, was that I had been raised as a 4th generation American Legion auxiliary member to trust our courts and I had not been able to find one honest judge.

Fact # 11. After filing the Amended Complaint on December 13, 2004, on December 14, 2004 to December 17, 2004 I experienced the beauty on "one" honest judge who started to restore my faith in American justice.

Fact # 12. On February 22, 2005, I filed the Rule 15 Motion for leave to file th Second Amended Complaint, free of the Christian short pleading time constraints and with the "unlawful" RICO participants Norman Levin held somewhat in tow by the State Court's Order, and denial of a rehearing, reuniting me with my Christian child.

Fact # 13. Given leave of Court to complete and file the Second Amended Complaint or on remand, if permitted, after Appeal, I believe that additional counts related to the negligence of Marc Kurzman and Carol Grant are required.

B. I admit that on December 13, 2004, that I was "discombobulated" and "disoriented" in my pleadings in the Amended Complaint since I had been the victim of attorney (from time to time called "officers of the court" and judicial misconduct rising to the level of depravation of parent-child rights guaranteed by the 1st, 5th, 9th and 14th amendment by a "dead beat dad" intending to deceive courts through perjury, attorneys using the mail and wires to commit fraud on the courts, and an "impaired" judge and then a judge who procured her judicial seat by fraud. A Florida Supreme Court Order is

a part of the case file concerning the procurement of an election by Nancy Alley by fraud.

Fact # 1. During 2003, in Sanford, Florida, Norman Levin moved to close discovery without disclosing his client's perjury or Norman Levin's and Edward Thomas' subornation of perjury fraud on the courts. I was unable to crack the fraud until January 9, 2004 when Matthew Thompson admitted under oath in a deposition that he sent out to lie to and deceive courts. **Many Court's Orders were entered while Ed Thomas and Norman Levin spent the "billable hours" money they earned from the fraud on the courts**.

Fact # 2. **Attorneys were either too weak, did not want to rock the boat, would not be truthful about their "colleagues" or were worried about their futures if they exposed obstruction of justice**. So I went pro se. I was unable to crack the fraud of attorneys and of a judge until the new judge Clayton Simmons, a Florida State Court Judge, on December 17, 2004, (post-Amended Complaint filing) opined that a problem had occurred in California when a false document was tendered to the

Court and then the false statement of facts were "cavalierly incorporated" into an order used to deprive me of my parent child rights and responsibilities. Ed Thomas and Norman Levin through their attorneys, Jeff Albinson, Mindy Miller and Norman Levin will not present the false sworn document to this Court.

Fact # 3. If my child had as a 7th generation natural born citizen had the governmental protection and legal assistance afforded, free of charge, to Elien Gonzalez, the washed ashore non-citizen child then I would have not been either pro se or "discombobulated" when I filed the December 13, 2004, Amended Complaint.

C. As a 7th generation natural born American who believes deeply in God I am aware that this Court and the 11th Circuit Court may not permit me to be in the Courts as we don't enjoy "subject matter" rights equivalent to those who wash ashore.

February 24, 2005

Respectfully Submitted

Rachel Braaten, Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON February 24, 2005, that I filed the Plaintiff's Response to the Magistrate Judge's Report with the Clerk of the Court and sent a true and correct copy of the Motion, of the Plaintiff's Affidavit and of a Complaint by Priority U. S. Mail with proper postage attached from Winter Park, Florida to the following named persons at the addresses they have of record with this Court, Matthew J. Thompson, c/o Norman D. Levin for Norman D. Levin and Norman D. Levin as counsel for Norman D. Levin, Matthew Capstraw, Norman D. Levin, P. A.,; to Marc Kurzman and Carol Grant individually and as counsel for Kurzman, Grant & Ojala, Chartered; Joseph Lee, Assistant AG for Florida; Jeff Albinson and Mindy Miller - Marshall, Dennehey, Warner, Coleman & Goggin; Frank Hoover Janet W. Adams and Kaci Kohler Line, Hill, Adams, Hall & Schieffelin, P A; Gregory Wilson, and John S.. Garry c/o Attorney General Michael Hatch and Mark Silverio.

February 24, 2005

_____

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, FL 32789

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

Civil Action File No. 6:04-CV-1414-ORL-GAP-KRS

Rachel Braaten

Plaintiff

vs.

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF RESPONSE TO MAGISTRATE' JUDGE'S REPORT

Matthew J. Thompson; Beverly Thompson;
Norman D. Levin; Matthew J. Capstraw;
Norman D. Levin, Professional Association (P.A.);
Carol Grant; Marc Kurzman;
Kurzman, Grant & Ojala Law Offices, Chartered;
Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover;
Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler;
Nancy DeLong, Emery Rosenbluth, Jr. and William Johnson

Defendants

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S AFFIDAVIT IN SUPPORT OF RESPONSE TO MAGISTRATE' JUDGE'S REPORT

STATE OF FLORIDA

COUNTY OF ORANGE

After being sworn and upon my oath, I Rachel Braaten do state as follow:

1. I am Rachel Braaten. I am a 6th generation Christian-American.

2. My son Christian is a 7th generation Christian-American.

3. I am merely a Sunday school teacher for little kid's and not out-spoken about my personal embracement of my faith.

4. I cite my faith as the reason I was twice able to make it through false imprisonments by officers of the courts, who claim to embrace the Jewish faith.

5. When apologize that when I complain of their misconduct as officers of our sacred American courts that I do not yet have the grace of Rosa Parks when she walked to the front of a bus to demonstrate her important complaint.

BEST EFFORTS ATTACHMENT DEMONSTRATING SIGNIFICANT REASONS FOR LEAVE TO FILE FINAL VERSION SECOND AMENDED COMPLAINT SERIOUS CLAIMS

6. I attach my best efforts, under the circumstances, Second Amended Complaint for review to determine whether the facts stated in the light most favorable to me/us

demonstrate sufficient misconduct by officers of the courts and judicial officials for a jury to conclude that we have been harmed.

7. I attach my best efforts, under the circumstances, Second Amended Complaint for review to determine whether the facts stated in the light most favorable to me/us demonstrate sufficient misconduct by officers of the courts and judicial officials for a federal judge or his/her Appellate Review panel to conclude that there needs to be an officer of the court crimes, court fraud, and court misconduct exception to the ***Rooker-Feldman*** doctrine.

"DISCOMBOBULATION" IS NORMAL REACTION TO AN ABNORMAL WAY OF LIFE IN KERN COUNTY, CALIFORNIA AND SEMINOLE COUNTY, FLORIDA

KERN COUNTY JUSTICE IS ANYTHING BUT NORMAL

8. I have been through the Kern County, California Court system where the FBI is now investigating why 18 families were falsely accused and then imprisoned, falsely, for up to 22 years as the result of officer of the court misconduct.

9. My own claims of officer of the court and judicial abuse from Kern County, California court officials, including a "State's Attorney blanketed exclusion for judicial bias judge, include at least the following:

A. The case called before mine on May 23, 2003, in Kern County, California involved a California woman convicted of cocaine usage and she was permitted to speak in a civil family matter and she got the return of custody of her 4 children.

B. I appeared as a Minnesota resident, non drug user, Sunday school teacher in a civil family court matter and I was not permitted to speak and the Court took custody of my 7th generation Christian-American son of Minnesota residence away from me,

C. Instead of letting me speak, while under oath, the court preferred to let Edward Thomas, at up to $695.00 an hour, as an officer of the court speak, to let his client, under oath, to speak falsely, and to let his client and Edward Thomas to submit what has now been determined by Judge Clayton Simmons in Seminole County, Florida on December 17, 2004 to conclude was a sworn declaration containing material misrepresentations that were then "cavalierly" adopted into a Court's Order taking custody from me.

10. I ask the Court to appreciate that having witnessed official officer of the court and judicial abuse targeted at my 7th generation American son, I would rather spend a life in prison as an innocent mother falsely accused than to permit my 3 ½ year old son to be denied American justice for his important moment in his life or to be falsely imprisoned, as he was, for even an hour's lost of precious American freedom.

11. I believe that the precious power of the American Judicial System is so necessary to an ordered Democracy that it must be protected from abuse from within by officers of its own courts so that it can responsibly act as the venue where disputes are settled peacefully and so that our society is protected and each American is assured of equal access to justice free from the unlawful dalliances of those sworn to uphold the law and assure the integrity of the courts as responsible officers of the courts.

12. Discombobulation, temporary as it was, is how I felt as I eye-witnessed the destruction of human rights, and life

changing and heart-breaking decisions, engineered by licensed attorneys parading as "paid" officers of courts using their positions of power to cavalierly harm, and to extract money (often borrowed or life's savings" from, moms and/or dads believing in their hearts and minds that they could get what the courts so broken cannot deliver – American Justice.

SEMINOLE COUNTY IS "NORM'S" COUNTY

13. After being ordered by Kern County, California to go to Seminole County, Florida an to engage in coast to coast travel with my son at some steep "roots" upheaval family leaving, 6th generation church leaving, home-town leaving, and job relocation seeking while engaged in trial proceedings at the same time in California and Florida with each Court ordering my continued presence I was told the following by licensed Florida attorneys:

A. No one in Seminole County or the Orlando area wants to litigate against Norman Levin because he controls all of the judges except one and he ran against that judge in an election so that the Judge cannot sit on any of Norman Levin's cases.

B. It may take up to $250,000.00 to litigate against Norman Levin.

C. We have proved they were lying all along but I cannot afford the time or the consequences of taking on Norman Levin.

14. When my grandfather, a licensed North Dakota attorney, raised me he never told me that his generation's courts were for sale or that those with the most money win; rather he told me he went to World War II so that each American could always go to court and get a fair hearing and a sense of justice.

15. To harm me in Seminole County, Florida Norman Levin and Judge Nancy Alley continually called me a "jurisdiction jumper" perhaps so they could not see me as a human with my son and then tell their conscience, or lack of it, that it was alright to falsely imprison a 7th generation Christian-American 3 ½ year old boy and his Sunday School mom in the hell hole where only drug users and sexual perverts were supposed to be.

WITH EACH MOMENT'S LOSS OF FREEDOM AND INJUSTICE I GREW DEEPER IN FAITH

16. I prayed each day that some good might come of the hardened cold hearts of Norman Levin and Nancy Alley who appeared to me to be evil in their actions where they became the law rather than just acting under its color.

17. I prayed that someday in America each American child could get a fair hearing based simply on their character and not on some judge's or attorneys' bias or official misconduct.

18. I prayed for Judicial Reform.

19. I prayed for federal oversight of the state's courts much like the Civil Right's movement did for Rosa Parks.

20. I prayed for public sentiment and equal treatment for our native born or legally naturalized American children similar as we give and provide to those who wash ashore or come her illegally in search of freedom and justice.

LIBERTY, FREEDM AND JUSTICE ARE WORTH THE EFFORT

21. I proceed pro se because attorneys who profit from the system seem insensitive to the need for Judicial Reform or of their vigilant responsibility to hold their "colleagues" accountable so that we as a free Republic

have standing to properly deserve the respect and continued support of each American citizen and of those abroad who want to join us or simply view us as a nation committed to preserving human rights, freedom, liberty and justice.

22. I am different than licensed attorneys as I believe that an officer of the courts highest duty is to the Courts and not to their paying client.

23. My grandfather often told me to trust our courts. I do. It is the misconduct of some of the court's judges and some of the courts paid officers that I question and therefore seek accountability.

FURTHER YOUR AFFIANT SAYETH NOT.

February 24, 2005

SS/Rachel Braaten

Rachel Braaten

STATE OF FLORIDA

COUNTY OF ORANGE

Before me the undersigned notary public authorized to take acknowledgements in the State and County aforesaid personally appeared Rachel Braaten, to me personally know or who

produced a valid driver's license _____ identifying herself, who executed the foregoing instrument and swore that the facts set forth there are true.

Witness my hand and official seal on this 24th[nd] day of February, 2005.

_____
Notary Public

No. _____

SUPREME COURT OF THE UNITED STATES
UNITED STATES OF AMERICA
October Term, 2005

Rachel Braaten, Petitioner

vs.

Matthew J. Thompson; Beverly Thompson; Norman D. Levin; Matthew J. Capstraw; Norman D. Levin, Professional Association (P.A.); Carol Grant; Marc Kurzman; Kurzman, Grant & Ojala Law Offices, Chartered; Nancy Zalusky Berg; Edward J. Thomas; Frank Hoover; Nancy F. Alley; Gail A. Adams; Dr. Daniel Tressler; Nancy DeLong, and William Johnson

Respondents

PETITIONER'S APPENDIX

Exhibit 9

Rachel Braaten, Pro Se
1331 Richmond Road
Winter Park, Fl 32789
Tel. 507-581-0277

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

RACHEL BRAATEN,

Plaintiff

-vs- **Case No. 6:04-cv-1414-ORL-31KRS**

MATTHEW THOMPSON, et al.,

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

This cause came on for consideration without oral argument on the motions to dismiss Plaintiff Rachel Braaten's Amended Complaint (doc. no. 75) filed by Matthew Thompson (doc no. 86), Beverly Thompson (doc. no. 88), Norman D. Levin, Matthew Capstraw and the Norman D. Levin, Professional Association (doc. no. 90), Carol Grant, Marc Kurzman and the Kurzman Grant & Ojala Law Offices (doc. no. 100), Nancy Berg (doc. no. 94), Edward Thomas (doc. no 83), Nancy Alley and Gail Adams, Florida state court judges, (doc. no. 76), Daniel Tressler (doc. no. 78), Nancy DeLong (doc. no. 84), and William

Johnson, a Minnesota state court judge, (doc. no. 113) (collectively "the defendants"),[1] to which Braaten has responded. Doc. Nos. 97, 98, 99, 102, 109, 110, 115, 123, 139, 140.[2] This matter was referred to me for issuance of a report and recommendation pursuant to 28 U.S.C. § 636(b)

I. PROCEDURAL HISTORY.

On September 29,2004, Braaten, appearing pro *se,* filed a complaint against the defendants, in which she asserted federal claims under the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*, and a common law claim for unjust enrichment. Complaint Paragraph's 102-28. On November 30, 2004, I granted Braaten leave to file an amended complaint. Doc. No. 69. On December 13, 2004, Braaten filed an amended complaint against the defendants, in which she asserts federal claims under the civil provisions of the RICO statute and common law claims for fraud, breach of a fiduciary duty and claim captioned "Conspiracy to Engage in Promissory Fraud"[3] Amended Complaint Paragraph's [107-236].[4]

The defendants argue, among other things, that Braaten's RICO claims should be dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983). Doc. Nos. 76, 78, 83, 84, 86, 88, 90, 94, 100, 113. Braaten has not adequately addressed this issue in any of the responses she has filed. Doc. Nos. 97, 98, 99, 102, 109,110, 115,123, 139, 140.[5]

II. BACKGROUND.

The series of events leading up to this litigation transpired as follows. In 1998 Braaten had a relationship with Matthew Thompson in Florida. Braaten became pregnant and moved to Minnesota, where she gave birth to a son, Christian Braaten, and married Luis Carmona. In the interim, Thompson filed a paternity action in Florida and Braaten filed a similar suit in Minnesota. *See Braaten-Carmona v. Carmona*, No. A03-786, 2003 WL 23024509 at *1 (Minn. Ct. App. De 30, 2003).

A Florida court granted Thompson's paternity petition and reserved the question of jurisdiction over custody and

visitation. Sometime thereafter, Braaten divorced Carmona and moved to California. Upon discovering that Braaten and Christian were residing in California, Thompson initiated custody proceedings in California. While the California custody proceeding were still pending, Braaten requested the Minnesota court that presided over her divorce proceedings to issue an order declaring Minnesota to be the child's home state under Minnesota version of the Uniform Child Custody Jurisdiction Act (UCCJA). Before the Minnesota court ruled on the matter, the California court entered an order awarding interim custody of Christian' Thompson. Thereafter, the Minnesota court denied Braaten's request for relief and declined to exercise jurisdiction over the custody proceedings. *Id.* at 1-2. Although it is not altogether clear from the pleadings, it appears that the California state court relinquished jurisdiction over the custody proceedings to Florida. It is unclear whether the custody dispute between Braaten and Matthew Thompson has been resolved by any Florida state court.

Judges Adams, Alley, Hoover and Johnson presided over the proceedings at issue at various stages throughout the

underlying custody dispute. Amended Complaint Paragraph's 19, 21-23. Berg, Thomas, Levin, and Capstraw represented Matthew Thompson and his wife, Beverly, at various stages throughout the proceedings. *Id. Paragraph's* 61-62. Carol Grant and Marc Kurzman represented Braaten at various stages throughout the proceedings. *Id. Paragraph's* 217-36. Tressler is a doctor who allegedly provided reports to one or more courts on behalf of Matthew Thompson. *Id. Paragraph's* 24, 97. According to Braaten, Delong is a hypnotist and counselor who evaluated Christian Braaten and allegedly provided reports to one or more courts on behalf of Matthew Thompson. *Id. Paragraph's* 25, 86, 98

III. ALLEGATIONS OF THE AMENDED COMPLAINT.

The amended complaint, which comprises 166 pages, is unusually prolix, involved and redundant.

In support of her RICO claims, Braaten alleges that the defendants conspired to deceive the judicial system by obtaining judicial orders procured by fraud in violation of 18 U.S.C. § 1962. Amended Complaint Paragraph's 10-26. 73. 75. 78. 83.

85-86,. 88,. 92-95. 107-216. Braaten appears to allege, among other things, that the judicial orders she complains of were the result of multiple violations of the mail and wire fraud statues, 18 U. S. C. Sections 1341 and 1343 ("Mail and Wire Fraud), as well as the Interstate and Foreign Travel or Transportation in Aid of Racketeering statute (the "Travel Act"), 18 U.S.C. § 1952, and that these violations serve as relevant predicate offenses for her civil RICO claims. Amended Complaint Paragraph's 15-23. Braaten further alleges that her son, Christian, was unlawfully transported across state lines as a result of the RICO scheme orchestrated by the defendants. *Id. Paragraph's* 9, 85.

Specifically, Braaten alleges that Matthew Thompson designed a scheme to defraud and deceive the judicial system and then implemented the scheme by securing "erroneous orders am decisions" from various state court judges. *Id. Paragraph's* 46, 86. Braaten alleges that Levin, the law offices of Norman D. Levin, Capstraw, Grant, Kurzman, Kurzman Grant & Ojala, Berg, and Thomas, "intentionally permitted and greatly assisted" Matthew Thompson in implementing and presenting "false

statements and untrue facts" for the purpose of securing "wrongful state court orders." *Id. Paragraph 64.*

Braaten further alleges that Judge Adams "appeared as a witness in furtherance of the RICO enterprise . . . and has been and is still assisting" the defendants in their "scheme[s] to defraud [the] courts[.]" *Id.* Paragraph 23. Braaten alleges that Judge Alley "has been and is still assisting the defendants in their "scheme[s] to defraud [the] courts[,]" *Id.* Paragraph 22. Braaten alleges that Jud Hoover "with specific intent to harm [her]. .. placed into the stream of the United States Postal Service for receipt in Minnesota, California and hi [Florida] a Court Order that was both unlawful and also obtained by the deceit and false representations of Edward Thomas and Matthew Thompson and/or Norman Levin. *Id.* Paragraph 21. Braaten further alleges that Judge Johnson "has been and is still assisting" the defendants in their "scheme[s] to defraud [the] courts[.]" *Id.* .Paragraph 19.

Braaten alleges that she was directly "injured in her property and money" as a result of having to expend in excess of

$375,000.00 to defend against RICO schemes orchestrated by the defendants. ID. Paragraph's 205-16. Braaten seeks an award of damages to compensate her for these losses.[6] *Id.* at 165,

The foregoing is but a summary of the allegations contained in the amended complaint related to the RICO claims, all of which center around judicial orders entered by state courts in child custody and/or support proceedings that took place in California, Minnesota and Florida, which Braaten claims are erroneous and fraudulent.

In support of her common law claims, Braaten alleges that Attorneys Grant and Kurzman fraudulently induced her to become and remain their client by promising to "honestly, earnestly, faithfully and competently represents [her] best interest." *Id.* Paragraph 218. She alleges that the attorney-client relationship she had with Grant and Kurzman established a fiduciary relationship. *Id.* Paragraph 226. She contends that the attorneys then engaged in a scheme to mislead courts through perjury, subornation of perjury and obstruction of justice and by

making material misrepresentations. *Id.* Paragraphs 222, 229, 232-35.

IV. STANDARD OF REVIEW.

A. Braaten's *Pro Se* Status.

I am mindful that Braaten is proceeding *pro se* and that her pleadings should be liberally construed and "held to a less stringent standard than pleadings drafted by attorneys.[.]" *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). Nevertheless, pro se status does not relieve a party from complying with relevant rules of procedural and substantive law. *See, e.g., Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990) (holding that *a pro se* litigant does not escape the essential burden of establishing the existence of a genuine issue of material fact under summary judgment standard); *accord Birl v. Estelle*, 660 F.2d592, 593 (5th Cir. 1981) ("The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law.").

B. Subject Matter Jurisdiction.

It is well established that federal courts "exercise limited subject matter jurisdiction, empowered to hear only those cases within the judicial power of the Unites States as defined by Article in of the Constitution or otherwise authorized by congress." *Taylor* v, *Appleton,* 30 F.3d 1365, 1367 (11th Cir. 1994). "Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them." *Ruhgras AG. v. Marathon O\ Co.,* 526 U.S. 574, 577 (1999). Subject matter jurisdiction implicates the court's authority to adjudicate a particular case and, as such, it may be challenged by either party, or by the court *sua sponte,* at any time while the action is pending. Fed. R. Civ. P. 12(h)(3); *Goodman v. Sipos,* 259 F.3d 1327, 1331 n.6 (11th Cir. 2001) ("A federal court must always dismiss a case upon determining that it lacks subject matter jurisdiction, regardless of the stage of the proceedings, an facts outside of the pleadings may be considered as part of that determination."). The burden of establishing a federal court's subject-matter jurisdiction, once challenged, rests on the party

asserting jurisdiction." *Whitson* v. *Staff Acquisition, Inc.*, 41 F. Supp. 2d 1294, 1295-96 (M.D. Ala. 1999) (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980).

V. ANALYSIS.

A. Braaten's RICO Claims are Barred by the *Rooker-Feldman* Doctrine.

The *Rooker-Feldman* doctrine stands for the proposition that federal courts, other than the United States Supreme Court, do not have subject matter jurisdiction to review the final judgments of state courts. *Amos v. Glynn County Bd. of Tax Assessors*, 347 F.3d 1249, 1266 n. 11 (11th Cir. 2003). The Supreme Court has explained that the *Rooker-Feldman* doctrine provides that "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

In sum, *Rooker-Feldman* bars lower federal court jurisdiction when four criteria are met:

> (1) the party in federal court is the same as the party in state court. . . (2) the prior state court ruling was a final or conclusive judgment on the merits,. . . (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding, . . . and (4) the issue before the federal court was either adjudicated by the state court or was inextricably intertwined with the state court's judgment[.]"

Amos, 347 F.3d at 1266 n. 11 (internal citations omitted).

"'A federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.'" *Goodman*, 259 F.3d at 1332 (11th Cir. 2001) (quoting *Siegel* v. *LePore*, 234 F,3d 1163. 117 (11th Cir. 2000)). In the Eleventh Circuit, the focal point of the inquiry is "on the federal claim's relationship to the issues involved in the state court proceeding, instead of on the type of relief sought by the plaintiff." *Id.* at 1333. "The *Rooker-Feldman* doctrine is broad enough to bar all federal claims which were, or should have been, central to the state court decision, even if those claims seek a form of relief

that might not have been available from the state court." *Id.* at 1334 , Moreover, the doctrine is not limited to state appellate court judgments. *Powell v, Powell,* 80 F.3d 464, 467 (11th Cir. 1996) ("A litigant may not escape application of the doctrine by merely electing not to appeal an adverse state trial court judgment.").

The defendants assert that Braaten's RICO claims axe so inextricably intertwined with the underlying state chiid custody proceedings that they should be barred under the *Rooker-Feldman* doctrine. "The elements of a civil RICO claim are: '(1) a violation of section 1962; (2) injury to business or property; and (3) that the violation caused the injury.'" *Portionpac Chemical Corp. v. Sanitech Sys., Inc.,* 217 F. Supp. 2d 1238,1254 (M.D. Fla. 2002) (quoting *Avirgan v. Hud,* 932 F.2d 1572, 1577 (11th Cir. 1991). It is well established that a plaintiff only has standing to pursue a civil RICO claim under 18 U.S.C. § 1962 "if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation." *Sedima, S.P.R.L. v. Imrex Co., Inc.,* 473 U.S.

479, 496 (1985); *accord O'Malley v. O'Neil,* 887 F.2d 1557, 1561 (11th Cir. 1989).

Braaten alleges that she was directly "injured in her property and money" as a result of having to expend in excess of $375,000.00 to defend against the RICO schemes orchestrated by the defendants. Amended Complaint Paragraph's 205-16. The injury Braaten alleges stems from the alleged conspiracy to deceive the judicial system by "securing wrongful state court orders" in violation of 18 U.S.C. § 1962.[7] Amended Complaint Paragraph's 10-26, 73, 75, 78, 83, 85-86, 88,92-95. Thus, in order for Braaten to prevail on her RICO claims, this Court would have to consider the validity of the state court orders she complains of and find them deficient. Without a factual finding that the state courts at issue erroneously ruled on certain matters, or that the state court judges named in the amended complaint actively participated in the alleged RICO schemes by entering "wrongful state court orders," I cannot envision how Braaten can obtain relief on her RICO claims. *Sedima,* 473 U.S. at 496; *O'Malley,* 887 F.2d at 1561. As such, the RICO claims implicate the *Rooker-Feldman* doctrine.

The criteria for application of the *Rooker-Feldman* doctrine are all present with respect to Braaten's RICO claims. First, the party against whom the doctrine is being applied, Braaten, was a party to the state court proceedings she is challenging. Second, there is nothing in the pleadings which suggests that the judicial orders Braaten complains of in the amended complaint did not constitute conclusive judgments on the merits as to the child custody and/or support issues adjudicated therein.[8]

Third, Braaten had a reasonable opportunity to present the issues underlying her RICO claims in the state court proceedings. As noted above, Braaten's RICO claims are predicated on her allegation that the state court judges named in the amended complaint conspired with the remaining defendants to enter "wrongful state court orders" in violation of 18 U.S.C. § 1962. California, Florida and Minnesota each have procedural mechanisms that allow for a party to mo[ve] to have a trial judge disqualified for bias or prejudice. *See* Cal. Code Civ. Proc. § 170.6; Fla. Stat. § 38.10; Fla. R. Jud. Admin. § 2.160; Minn. Stat. § 542.16; Minn. R. Civ, P. 63.03. Each state also provides

for some avenue of appellate review of an order denying a motion to disqualify a trial judge. *See* Cal. Code Civ. Proc. § 170.3(d) (stating that appellate review of an order denying a request for judicial disqualification is available by writ of mandate from the appropriate court o appeal); *Siege!* v. *Florida,* 861 So. 2d 90, 92 (Fla. 4th Dist. Ct. App. 2003) ("Prohibition lies to review trial court orders denying motions to disqualify trial judges"); *Roatch v. Puera,* 534 N.W.2d 560, 562-64 (Minn. Ct. App. 1995) (addressing the issue of whether the trial court was disqualified from hearing a case on direct appeal from the underlying judgment entered in the case).

Braaten concedes in the amended complaint that she was aware of Matthew Thompson's intention to "defraud and deceive the Judicial System" before any of the relevant predicate acts that support her RICO claims took place. Amended Complaint Paragraph's 58-62. Moreover, Braaten doe not allege that she was unaware of the alleged RICO conspiracy at any point along the time line set forth in the amended complaint. Thus, I find that Braaten had a reasonable opportunity to raise the substance of her

RICO claims in the stare court proceedings at issue. *See. Goodman.259* .F 3d at 1333 ("The Rooker=-Feldman doctrine is broad enough to bar all federals claims which were, or should have been, central to the state court decision, even if those claims seek a form of relief that might not have been available from the state court.").

Finally, the issues before this court are inextricably intertwined with the orders entered b the state courts in that Braaten's RICO claims, as set forth in the amended complaint, "'succeed) only to the extent that the state court wrongly decided the issues before it.'" *Id.* at 1332 (quoting *Siegel,* 234 F.3d at 1167 (11th Cir. 2000)).

In sum, a plaintiff may not seek what would in effect amount to a collateral review of state court proceedings simply by casting a complaint in the form of a RICO action. *Id.* at 1331-35 (holding that civil rights claims based on allegations of false affidavits and improper threats in connection with child custody proceedings were barred by the *Rooker-Feldman* doctrine); *accord Alperm v. Lieb,* 38 F.3d 933, 934 (7th Cir. 1994) (holding that a plaintiffs suit against his former wife, her

attorney, and the state judge who pronounced the divorce was barred by, among other things, the *Rooker-Feldman* doctrine); *Davit v. Davit,* No. 03 C 4883, 2004 WL 2966963 at *6-8 (N.D. Ill. Nov. 22, 2004) (holding that RICO claim against attorneys who participated in and state court judges who presided over plaintiffs divorce proceedings was barred by the *Rooker-Feldman* doctrine); *Huszar v. Zeleny,* 269 F. Supp. 2d 98, 103 (E.D.N.Y. 2003) (holding that RICO claim related to plaintiff's ongoing state court divorce proceedings was barred by, among other things, the *Rooker-Feldman* doctrine). To permit such an undertaking would frustrate long standing principles of comity and federalism that serve as the bedrock for the dual system of sovereignty that exists between lower federal courts and state courts. Thus, I respectfully recommend that Braaten's RICO claims against all defendants be dismissed for lack of subject matter jurisdiction.

B. Diversity Jurisdiction Over Common Law Claims.

Braaten asserts common law claims for fraud, breach of a fiduciary duty and conspiracy to engage in promissory fraud

against Grant and Kurzman.[9] Amended Complaint fl[217-36. As noted above, the amended complaint as a whole does not allege a basis for diversity jurisdiction because some of the defendants are citizens of Florida, and Braaten is a citizen of Florida.

It is well established that "[diversity jurisdiction ordinarily is not available 'when any plaintiff is a citizen of the same state as any defendant.'" *Hiram Walker & Sons, Inc. v. Kirk Line,* 877 F.2d 1508, 1511 (11th Cir. 1989) (quoting *Owen Equip. & Erection Co.* v. *Kroger,* 437 U.S. 365, 374 (1978)). There is, however, some support for the proposition that the Court should analyze the complaint on a claim-by-claim basis to determine whether federal jurisdiction exists as to each claim. *See Williams v. Conseco, Inc., 51* F. Supp. 2d 1311, 1316-17 (S.D. Ala. 1999).

The complaint alleges that Grant and Kurzman are citizens of Minnesota, *see* Amended Complaint Paragraph's 8, 15-17, while Braaten is a citizen of Florida. Braaten alleges that the amount in controversy as to each common law claim is $375,000.00. Therefore, at the time the amended complaint was

filed, diversity jurisdiction existed with respect to Braaten's common law claims against Grant and Kurzman, if such jurisdiction is viewed on a claim-by-claim basis. Accordingly, if the Court dismisses the nondiverse defendants for lack of subject matter jurisdiction, it will have diversity jurisdiction over the common law claims brought against Grant and Kurzman.

C. Braaten's Amended Complaint Fails to Comply with Fed. R. Civ. P. *10(b)* with Respect to Her Common Law Claims Against Grant and Kurzman.

As previously discussed, Braaten's amended complaint is redundant, rambling and unorganized. To make matters worse, Braaten incorporates all previous allegations in the amended complaint (including those that apply solely to her RICO claims) into her common law claims against Grant and Kurzman. *Id.* Paragraph's 217, 225, 231. Thus, it is virtually impossible to determine with any degree of specificity which allegations in the amended complaint support her common law claims against Grant and Kurzman as distinguished from her RICO claims against all defendants. "Where, as here, the plaintiff asserts multiple claims for relief, a more definite

statement, if properly drawn, will present each claim for relief in a separate count, as required by Rule 10(b).. . and with such clarity and precision that the defendant will be able to discern what the plaintiff is claiming and to frame a responsive pleading." *Anderson* v. *District Bd. of Trustees of Cent. Fla. Comty. College, 11* F.3d 364, 366 (11th Cir. 1996) (footnote omitted)

Accordingly, I respectfully recommend that Braaten's common law claims against Grant and Kurzman for fraud, breach of a fiduciary duty and conspiracy to engage in promissory fraud be dismissed, without prejudice, with leave for Braaten to replead *only* these claims against Grant and Kurzman.

VI. RECOMMENDATION.

Based on the foregoing analysis, I respectfully recommend that Braaten's RICO claims be **DISMISSED** for lack of subject matter jurisdiction, and that the pending motions filed by the defendants named in the RICO counts (doc. nos. 76, 77, 78, 82, 83, 84, 86, 88, 90, 93, 94, 96, 113. 124, 129) be **DENIED** as moot.

I further recommend that Defendants' Carol Grant, Marc G. Kurzman, and Kurzman, Grant & Ojala Law Offices Chartered, Motion to Dismiss Amended Complaint (doc. no. 100) be GRANTED and that Braaten be permitted to replead *only* her common law claims against Grant & Kurzman.[10]

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of its filing shall bar an aggrieved party from attacking the factual findings on appeal.

Recommended in Orlando, Florida on February 16, 2005.

KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Parties
District Courtroom Deputy

Footnotes:

[1] Frank Hoover, a California state court judge, was also named as a defendant in the amended complaint. It does not appear that Judge Hoover has been served with process in this case.

[2] Braaten has not responded to the motion to dismiss filed by Judge Johnson, and the time for doing so has passed.

[3] Braaten asserts RICO claims against all of the defendants. Her common law claims for fraud, breach of a fiduciary duty and conspiracy to engage in promissory fraud concern only Grant and Kurzman. Amended Complaint Paragraph's 217-36.

[4] Braaten alleges that the Court has both federal question and diversity jurisdiction over all of her claims against the defendants. Amended Complaint Paragraphs 1-2, With respect to diversity, Braaten's assertion is belied by her allegations that she and several of the defendants are citizens of Florida. *See id* Paragraph's 8, 10, 11, 12, 13, 14, 23, 24, and 25.

[5] In her response to Delong's motion to dismiss (doc. no. 110), Braaten contends the *Rooker-Feldman* doctrine does not apply when "the Florida attorney General decides to assist a state court judge who procured her judicial election by fraud instead of reviewing the criminal misconduct and seeking indictments for perjury, subornation of perjury, and false imprisonment *Id.* at 2-3. I do not consider this an adequate response.

[6] Braaten also seeks punitive damages. However, she does not seek any form of injunctive or declaratory relief on her RICO claims. *Id.* At 165.

[7] As previously discussed, Braaten appears to allege that the judicial orders she complains of were the result of multiple acts of Mail and Wire Fraud as well as violations of the Travel Act, and that these violations are the predicate offenses for her civil RICO claims.

[8] To the extent that custody proceedings are still pending in Florida state court, the *Younger* abstention doctrine precludes this court from interfering with ongoing child custody proceedings. *See, e.g., Younger* v. *Harris*, 401 U.S. 37 (1971); *Liedel* v. *Juvenile Court of Madison County, Ala.*, 891 F.2d 1542, 1546 (1 1th Cir. 1990) (holding that federal district courts

may not interfere with ongoing child custody proceedings under the *Younger* abstention doctrine).

[9] Braaten's common law claims against Grant and Kurzman do not directly implicate the validity of the underlying state court orders that are central to her RICO claims.

[10] I recommend that the presiding District Judge advise Braaten that further attempts to seek review of state court orders or judgments by this Court will not be well taken. Moreover, the fact that Braaten is proceeding *pro se* does not relieve her of the obligation to comport herself with civility in documents filed with the Court. Personal attacks on the parties involved in this litigation are inappropriate and will no longer be tolerated by the Court.

No. 05-687

In The
SUPREME COURT OF THE UNITED STATES

RACHEL BRAATEN,

Petitioner,

v.

MATTHEW J. THOMPSON; BEVERLY THOMPSON; NORMAN D. LEVIN; MATTHEW J. CAPSTRAW; NORMAN D. LEVIN, PROFESSIONAL ASSOCIATION (P.A.); CAROL GRANT; MARC KURZMAN; KURZMAN GRANT & OJALA LAW OFFICES; CHARTERED; NANCY ZALUSKY BERG; EDWARD J. THOMAS; FRANK HOOVER; NANCY F. ALLEY; GAIL A ADAMS; DR. DANIEL TRESSLER; NANCY DELONG, AND WILLIAM JOHNSON,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Marshal D. Morgan, Esq.
Counsel of Record on behalf of Respondents Matthew J. Thompson, Norman D. Levin; Matthew J. Capstraw, and Norman D. Levin, P.A.
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COUNTER STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

In her petition, the Petitioner presented five questions for review by this Court should it grant certiorari to the United States Court of Appeal for the Eleventh Circuit. Respondents respectfully oppose the questions presented by the Petitioner based on the fact that this Court does not have jurisdiction to consider any of them. Instead, the only possible question that could conceivably be reviewed by this Court if it were to grant certiorari is the following:

> Did the U.S. Court of Appeals for the Eleventh Circuit correctly dismiss the Petitioner's appeal for lack of jurisdiction after the Petitioner elected to amend her Complaint, and otherwise failed to request certification under Title 28 U.S.C. §1292(b)?

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CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

Respondents respectfully oppose the Petitioner's statement of the basis for jurisdiction of this Court. In her Petition for a Writ of Certiorari, the Petitioner claims, inter alia, that the Court of Appeals' dismissal of her appeal "so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the U.S.D.C. for the Middle District of Florida" that it is now necessary for this Court to exercise its supervisory powers under Rule 10(a).[1] Respondents strongly disagree.

Despite the Petitioner's long-winded diatribe regarding the merits of her complaint and the many supposed RICO violations committed by each and every lawyer and judge who has ever participated in this case, her Petition for a Writ of Certiorari categorically misstates and misconstrues the procedural history and facts of this case.

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[1] In reality, the Petitioner's Petition for Certiorari is replete with so much extraneous and irrelevant information that Respondents have elected to file this Opposition in order to make sense of the truly salient issues before the Court.

For example, on page one of her Petition, the Petitioner incorrectly states that the Court of Appeals "affirm[ed] that the United States District Court for the Middle District of Florida is not mandated by 18 USC 1964 to exercise subject matter jurisdiction over RICO claims that otherwise factually state a cause of action under the federal wire and mail fraud federal statutes, 18 USC 1343 and 1341." (Emphasis added.) This statement is incorrect inasmuch as the Court of Appeals did not "affirm" the District Court. Instead, the Court of Appeals dismissed, sua sponte, the Petitioner's appeal for lack of jurisdiction because the District Court's Order was not final and appealable. The Court of Appeals dismissed the appeal on wholly procedural grounds. Therefore, any discussion in the Petitioner's Petition regarding the merits of her case or the plentiful allegations of RICO violations are misplaced and irrelevant and should be disregarded by this Court in determining whether or not to grant the Petitioner's Petition for a Writ of Certiorari. As will be explained more thoroughly in the Argument section to follow, not only did the Court of Appeals not err in dismissing Petitioner's

appeal, this case certainly does not merit the granting of certiorari or the exercise of this Court's supervisory power.

ARGUMENT

On March 8, 2005, the United States District Court for the Middle District of Florida entered an Order dismissing Plaintiff's RICO claims against all defendants and granted leave to amend the complaint as to her common law claims against defendants Grant and Kurzman. In accordance with the leave granted by the Court, on March 18, 2005, the Petitioner filed a Third Amended Complaint against defendants Grant and Kurzman.

Notwithstanding the filing of the Third Amended Complaint, on April 1, 2005, the Petitioner filed a Notice of Appeal of the Court's March 8 Order before the U.S. Court of Appeals for the Eleventh Circuit. At no time prior to filing her Notice of Appeal did the Petitioner request certification from the District Court under title 28 U.S.C. §1292(b). On May 12, 2005, the Court of Appeals dismissed sua sponte, the Petitioner's appeal based on lack of jurisdiction.

Rule 54(b) of the Federal Rules of Civil Procedure provides that,

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. (Emphasis added.)

The entry of a final judgment under Rule 54(b), moreover, is a matter left to the discretion of the district court, given that it is "the one most likely to be familiar with the case and with any justifiable reasons for delay" in releasing for appeal a decision on less than all claims or parties. Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 437 (1956).

If, however, the district court believes an issue is worthy of immediate appeal, it may sua sponte, or upon the request of a party,

certify the issue for appeal under title 28 U.S.C. §1292(b). Section 1292(b) provides as follows:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order. (Emphasis added.)

In this case, the Court of Appeals dismissed the Petitioner's appeal for lack of jurisdiction based on the well established principle of law that "an order dismissing a complaint is not final and appealable unless the order holds that it dismisses the entire action or that the complaint could not be saved by amendment. Briehler v. City of Miami, 926 F.2d 1001, 1003 (11th Cir. 1991) (citing, Czeremcha v. International Ass'n of Machinists and Aerospace Workers, AFL-CIO, 724 F.2d 1552, 1554-55 (11th Cir.1984)). Here,

the Petitioner opted to amend her Complaint. Such amendment, therefore, kept the case open, active, non-final and otherwise unappealable.

Moreover, Petitioner's Petition for Writ of Certiorari raises not a single argument in support of the March 8, 2005 Order being final and appealable. As such, there are no grounds before this Court upon which it should grant certiorari, much less exercise its supervisory power under Rule 10(a).

CONCLUSION

For the reasons stated above the Respondents respectfully request therefore that Petitioner's Petition for Certiorari be **DENIED**.

Respectfully submitted,

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